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OFFICIAL REPORTS

OF

THE SUPREME COURT

FEBRUARY 25 THROUGH APRIL 1, 2021

END OF VOLUME

REBECCA A. WOMELDORF
REPORTER OF DECISIONS

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Vol. 592 (Pp. 209–444; 1301–1358) UNITED STATES REPORTS Part 2

JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS*

JOHN G. ROBERTS, JR., CHIEF JUSTICE.
CLARENCE THOMAS, ASSOCIATE JUSTICE.
STEPHEN BREYER, ASSOCIATE JUSTICE.
SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE.
SONIA SOTOMAYOR, ASSOCIATE JUSTICE.
ELENA KAGAN, ASSOCIATE JUSTICE.
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SANDRA DAY O'CONNOR, ASSOCIATE JUSTICE.
ANTHONY M. KENNEDY, ASSOCIATE JUSTICE.
DAVID H. SOUTER, ASSOCIATE JUSTICE.

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MERRICK GARLAND, ATTORNEY GENERAL.[2]
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RICHARD NELSON, ACTING MARSHAL.
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* For notes, see p. II.

NOTES

[1] Mr. Wilkinson resigned effective March 11, 2021.

[2] The Honorable Merrick Garland of Maryland, was nominated by President Biden on January 20, 2021, to be Attorney General; the nomination was confirmed by the Senate on March 10, 2021; he was commissioned and took the oath of office on the March 11, 2021.

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 November 20, 2020, 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, Sonia Sotomayor, 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, Samuel A. Alito, Jr., Associate Justice.

For the Sixth Circuit, Brett M. Kavanaugh, Associate Justice.

For the Seventh Circuit, Amy Coney Barrett, Associate Justice.

For the Eighth Circuit, Brett M. Kavanaugh, Associate Justice.

For the Ninth Circuit, Elena Kagan, Associate Justice.

For the Tenth Circuit, Neil M. Gorsuch, Associate Justice.

For the Eleventh Circuit, Clarence Thomas, Associate Justice.

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

November 20, 2020.

(For next previous allotment, see 592 U. S., Pt. 1, p. III.)

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The syllabus in a case constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337 (1906).

A list of counsel who argued or filed briefs in a reported case, and who were members of the Court's Bar at the time the case was argued, are included in the United States Reports along with the Court's opinion in the case.

Syllabus

BROWNBACK ET AL. *v.* KING

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

No. 19–546. Argued November 9, 2020—Decided February 25, 2021

The Federal Tort Claims Act (FTCA) allows a plaintiff to bring certain state-law tort claims against the United States for torts committed by federal employees acting within the scope of their employment, provided that the plaintiff alleges six statutory elements of an actionable claim. See 28 U. S. C. §1346(b). Another provision, known as the judgment bar, provides that "[t]he judgment in an action under section 1346(b)" shall bar "any action by the claimant" involving the same subject matter against the federal employee whose act gave rise to the claim. §2676. Respondent James King sued the United States under the FTCA after a violent encounter with Todd Allen and Douglas Brownback, members of a federal task force. He also sued the officers individually under the implied cause of action recognized by *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388. The District Court dismissed his FTCA claims, holding that the Government was immune because the officers were entitled to qualified immunity under Michigan law, or in the alternative, that King failed to state a valid claim under Federal Rule of Civil Procedure 12(b)(6). The court also dismissed King's *Bivens* claims, ruling that the officers were entitled to federal qualified immunity. King appealed only the dismissal of his *Bivens* claims. The Sixth Circuit found that the District Court's dismissal of King's FTCA claims did not trigger the judgment bar to block his *Bivens* claims.

Held: The District Court's order was a judgment on the merits of the FTCA claims that can trigger the judgment bar. Pp. 214–219.

(a) Similar to common-law claim preclusion, the judgment bar requires a final judgment "'on the merits,'" *Semtek Int'l Inc.* v. *Lockheed Martin Corp.*, 531 U. S. 497, 502. Here, the District Court's summary judgment ruling dismissing King's FTCA claims hinged on a quintessential merits decision: whether the undisputed facts established all the elements of King's FTCA claims. See *Arbaugh* v. *Y & H Corp.*, 546 U. S. 500, 510–511. The court's alternative Rule 12(b)(6) holding also passed on the substance of King's FTCA claims, as a 12(b)(6) ruling concerns the merits. *Id.*, at 506–507. Pp. 214–217.

(b) In passing on King's FTCA claims, the District Court also determined that it lacked subject-matter jurisdiction over those claims. In

most cases, a plaintiff's failure to state a claim under Rule 12(b)(6) does not deprive a federal court of subject-matter jurisdiction. See *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 89. Here, however, in the unique context of the FTCA, all elements of a meritorious claim are also jurisdictional. Thus, even though a plaintiff need not prove a § 1346(b)(1) jurisdictional element for a court to maintain subject-matter jurisdiction over his claim, see *FDIC* v. *Meyer*, 510 U. S. 471, 477, because King's FTCA claims failed to survive a Rule 12(b)(6) motion to dismiss, the court also was deprived of subject-matter jurisdiction. Generally, a court may not issue a ruling on the merits when it lacks subject-matter jurisdiction, see *Steel Co.*, 523 U. S., at 101–102, but where, as here, pleading a claim and pleading jurisdiction entirely overlap, a ruling that the court lacks subject-matter jurisdiction may simultaneously be a judgment on the merits that can trigger the judgment bar. Pp. 217–219.

917 F. 3d. 409, reversed.

THOMAS, J., delivered the opinion for a unanimous Court. SOTOMAYOR, J., filed a concurring opinion, *post*, p. 219.

Michael R. Huston argued the cause for petitioners. With him on the briefs were *Solicitor General Francisco*, *Acting Solicitor General Wall*, *Assistant Attorney General Hunt*, *Deputy Solicitor General Wall*, *Deputy Assistant Attorney General Mooppan*, and *Mark B. Stern*.

Patrick M. Jaicomo argued the cause for respondent. With him on the brief were *Anya Bidwell* and *D. Andrew Portinga*.*

JUSTICE THOMAS delivered the opinion of the Court.

The Federal Tort Claims Act (FTCA) allows a plaintiff to bring certain state-law tort suits against the Federal Gov-

*Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *David D. Cole*, *Jennesa Calvo-Friedman*, *Daniel S. Korobkin*, and *Miriam J. Aukerman*; for the Cato Institute et al. by *Kelsi Brown Corkran*, *Thomas M. Bondy*, *Benjamin Chagnon*, *Rachel G. Shalev*, *Clark M. Neily III*, *Jay R. Schweikert*, and *Jonathan H. Feinberg*; for the Law Enforcement Action Partnership by *Robert A. Long, Jr.*; for Members of Congress by *Angela C. Vigil* and *Joshua D. Odintz*; for Public Citizen by *Allison M. Zieve*, *Kaitlin E. Leary*, and *Scott L. Nelson*; and for James E. Pfander et al. by *Carter G. Phillips*, *Jeffery T. Green*, and *Sarah O'Rourke Schrup*.

ernment. 28 U. S. C. § 2674; see also § 1346(b). It also includes a provision, known as the judgment bar, which precludes "any action by the [plaintiff], by reason of the same subject matter, against the employee of the government whose act or omission gave rise to the claim" if a court enters "[t]he judgment in an action under section 1346(b)." § 2676. The Sixth Circuit held that the District Court's order dismissing the plaintiff's FTCA claims did not trigger the judgment bar because the plaintiff's failure to establish all elements of his FTCA claims had deprived the court of subject-matter jurisdiction. We disagree and hold that the District Court's order also went to the merits of the claim and thus could trigger the judgment bar.

I

A

The FTCA streamlined litigation for parties injured by federal employees acting within the scope of their employment. Before 1946, a plaintiff could sue a federal employee directly for damages, but sovereign immunity barred suits against the United States, even if a similarly situated private employer would be liable under principles of vicarious liability. J. Pfander & N. Aggarwal, *Bivens*, the Judgment Bar, and the Perils of Dynamic Textualism, 8 U. St. Thomas L. J. 417, 424–425 (2011); see also *Philadelphia Co.* v. *Stimson*, 223 U. S. 605, 619–620 (1912). Despite that immunity, the Government often would provide counsel to defendant employees or indemnify them. Pfander, 8 U. St. Thomas L. J., at 425. In addition, Congress passed private bills that awarded compensation to persons injured by Government employees. *Id.*, at 424, n. 39. But by the 1940s, Congress was considering hundreds of such private bills each year. *Ibid.*[1] "Critics worried about the speed and fairness with which Congress disposed of these claims." *Id.*, at 426.

[1] In 1939 and 1940 the 76th Congress considered 1,763 private bills, of which 315 became law. Pfander, 8 U. St. Thomas L. J., at 424, n. 39.

"In 1946, Congress passed the FTCA, which waived the sovereign immunity of the United States for certain torts committed by federal employees" acting within the scope of their employment. *FDIC* v. *Meyer*, 510 U. S. 471, 475–476 (1994). The Act in effect ended the private bill system by transferring most tort claims to the federal courts. See Pfander, 8 U. St. Thomas. L. J., at 424, n. 39. Plaintiffs were (and are) required to bring claims under the FTCA in federal district court. Federal courts have jurisdiction over these claims if they are "actionable under § 1346(b)." *Meyer*, 510 U. S., at 477. A claim is actionable if it alleges the six elements of § 1346(b), which are that the claim be:

> "[1] against the United States, [2] for money damages, . . . [3] for injury or loss of property, or personal injury or death [4] caused by the negligent or wrongful act or omission of any employee of the Government [5] while acting within the scope of his office or employment, [6] under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." *Ibid.* (quoting § 1346(b)).

While waiving sovereign immunity so parties can sue the United States directly for harms caused by its employees, the FTCA made it more difficult to sue the employees themselves by adding a judgment bar provision. That provision states: "The judgment in an action under section 1346(b) of this title shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the government whose act or omission gave rise to the claim." § 2676. "[O]nce a plaintiff receives a judgment (favorable or not) in an FTCA suit," the bar is triggered, and "he generally cannot proceed with a suit against an individual employee based on the same underlying facts." *Simmons* v. *Himmelreich*, 578 U. S. 621, 625 (2016). The

Act thus opened a new path to relief (suits against the United States) while narrowing the earlier one (suits against employees).

B

This case involves a violent encounter between respondent James King and officers Todd Allen and Douglas Brownback, members of a federal task force, who mistook King for a fugitive. King sued the United States under the FTCA, alleging that the officers committed six torts under Michigan law. He also sued the officers individually under the implied cause of action recognized by *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971), alleging four violations of his Fourth Amendment rights. The defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(1) for lack of subject-matter jurisdiction and under Rule 12(b)(6) for failure to state a claim. In the alternative, they moved for summary judgment.

The District Court dismissed King's claims. As to his FTCA claims, the court granted the Government's summary judgment motion.[2] It found that the undisputed facts showed that the officers did not act with malice. The officers thus would have been entitled to state qualified immunity had Michigan tort claims been brought against them. See *Odom* v. *Wayne County*, 482 Mich. 459, 473–474, 760 N. W. 2d 217, 224–225 (2008). The court, following its own precedent, ruled that the Government was immune because it retains the benefit of state-law immunities available to its employees. The court also ruled in the alternative that King's FTCA claims failed under Rule 12(b)(6)

[2] Like the Sixth Circuit, we construe the District Court's primary ruling on the FTCA claims as a grant of summary judgment for the defendants because its ruling relied on the parties "'Joint Statement of Facts . . . unless otherwise indicated.'" *King* v. *United States*, 917 F. 3d 409, 416, n. 1 (CA6 2019) (quoting ECF Doc. 91, p. 1).

because his complaint did not present enough facts to state a plausible claim to relief for any of his six tort claims. The court dismissed King's *Bivens* claims as well, ruling that the defendants were entitled to federal qualified immunity. King appealed only the dismissal of his *Bivens* claims.

As a threshold question, the Sixth Circuit assessed whether the dismissal of King's FTCA claims triggered the judgment bar and thus blocked the parallel *Bivens* claims. See *King* v. *United States*, 917 F. 3d 409, 418–421 (2019). It did not, according to the Sixth Circuit, because "the district court dismissed [King]'s FTCA claim[s] for lack of subject-matter jurisdiction" when it determined that he had not stated a viable claim and thus "did not reach the merits." *Id.*, at 419; but see *Unus* v. *Kane*, 565 F. 3d 103, 121–122 (CA4 2009) (holding that summary judgment on the plaintiffs' FTCA claims triggered judgment bar with respect to *Bivens* claims). The Sixth Circuit then held that the defendant officers were not entitled to qualified immunity and reversed the District Court.

We granted certiorari, 589 U. S. 1293 (2020), and now reverse.

II

A

The judgment bar provides that "[t]he judgment in an action under section 1346(b)" shall bar "any action by the claimant" involving the same subject matter against the employee of the Federal Government whose act gave rise to the claim. §2676. Here, the District Court entered a "Judgment . . . in favor of Defendants and against Plaintiff." ECF Doc. 92. The parties agree that, at a minimum, this judgment must have been a final judgment on the merits to trigger the bar, given that the "provision functions in much the same way as [the common-law doctrine of claim preclusion]."

Simmons, 578 U. S., at 630, n. 5 (internal quotation marks omitted).[3] We agree.[4]

B

This Court has explained that the judgment bar was drafted against the backdrop doctrine of res judicata. See *ibid.*[5] To "trigge[r] the doctrine of res judicata or claim preclusion" a judgment must be "'on the merits.'" *Semtek Int'l Inc.* v. *Lockheed Martin Corp.*, 531 U. S. 497, 502 (2001). Under that doctrine as it existed in 1946, a judgment is "on the merits" if the underlying decision "actually 'passes directly on the substance of a particular claim' before the court." *Id.*, at 501–502 (brackets omitted).[6] Thus, to determine

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[3] The terms res judicata and claim preclusion often are used interchangeably. See *Lucky Brand Dungarees, Inc.* v. *Marcel Fashions Group, Inc.*, 590 U. S. 405, 411–412 (2020). But res judicata "comprises two distinct doctrines." *Id.*, at 411. The first is issue preclusion, also known as collateral estoppel. *Ibid.* It precludes a party from relitigating an issue actually decided in a prior case and necessary to the judgment. *Ibid.* The second doctrine is claim preclusion, sometimes itself called res judicata. *Id.*, at 412. Claim preclusion prevents parties from relitigating the same "claim" or "'cause of action,'" even if certain issues were not litigated in the prior action. *Ibid.* Suits involve the same "claim" or "'cause of action'" if the later suit "'"aris[es] from the same transaction"'" or involves a "'common nucleus of operative facts.'" *Ibid.*

[4] King argues, among other things, that the judgment bar does not apply to a dismissal of claims raised in the same lawsuit because common-law claim preclusion ordinarily "is not appropriate within a single lawsuit." 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4401 (3d ed. Supp. 2020). The Sixth Circuit did not address those arguments, and "we are a court of review, not of first view." *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005). We leave it to the Sixth Circuit to address King's alternative arguments on remand.

[5] The parties disagree about how much the judgment bar expanded on common-law preclusion, but those disagreements are not relevant to our decision. See n. 4, *supra*.

[6] We use the term "on the merits" as it was used in 1946, to mean a decision that passed on the substance of a particular claim. "[O]ver the years the meaning of the term 'judgment on the merits' 'has gradually

if the District Court's decision is claim preclusive, we must determine if it passed directly on the substance of King's FTCA claims. We conclude that it did.

The District Court's summary judgment ruling hinged on a quintessential merits decision: whether the undisputed facts established all the elements of King's FTCA claims. See *Arbaugh* v. *Y & H Corp.*, 546 U. S. 500, 510–511 (2006). The court noted that one element of an FTCA claim is that the plaintiff establish that the Government employee would be liable under state law. The court then explained that Michigan law provides qualified immunity for Government employees who commit intentional torts but act in subjective good faith. See *Odom*, 482 Mich., at 461, 481–482, 760 N. W. 2d, at 218, 229. And it concluded that, because the undisputed facts here showed that the officers would have been entitled to immunity from King's tort claims, the United States, by extension, was not liable under the FTCA.[7]

The court's alternative Rule 12(b)(6) holding also passed on the substance of King's FTCA claims. The District Court ruled that the FTCA count in King's complaint did not state a claim, because even assuming the complaint's veracity, the officers used reasonable force, had probable cause to detain King, and otherwise acted within their authority. "If the judgment determines that the plaintiff has no cause of action" based "on rules of substantive law," then "it is on the merits." Restatement of Judgments § 49, Comment *a*, p. 193 (1942). A ruling under Rule 12(b)(6) concerns the

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undergone change'" and now encompasses some judgments "that do *not* pass upon the substantive merits of a claim and hence do *not* (in many jurisdictions) entail claim-preclusive effect." *Semtek*, 531 U. S., at 502. Regardless, the FTCA judgment in this case is an "on the merits" decision that passes on the "substance" of King's FTCA claims under the 1946 meaning or present day meaning of those terms.

[7] We express no view on the availability of state-law immunities in this context. Compare *Medina* v. *United States*, 259 F. 3d 220, 225, n. 2 (CA4 2001), with *Villafranca* v. *United States*, 587 F. 3d 257, 263, and n. 6 (CA5 2009).

merits. Cf. *Arbaugh*, 546 U. S., at 506–507. The District Court evaluated King's six FTCA claims under Rule 12(b)(6) and ruled that they failed for reasons of substantive law.

C

The one complication in this case is that it involves overlapping questions about sovereign immunity and subject-matter jurisdiction. In such cases, the "merits and jurisdiction will sometimes come intertwined," and a court can decide "all . . . of the merits issues" in resolving a jurisdictional question, or vice versa. *Bolivarian Republic of Venezuela* v. *Helmerich & Payne Int'l Drilling Co.*, 581 U. S. 170, 178 (2017). That occurred here. The District Court passed on the substance of King's FTCA claims and found them implausible. In doing so, the District Court also determined that it lacked jurisdiction. But an on-the-merits judgment can still trigger the judgment bar, even if that determination necessarily deprives the court of subject-matter jurisdiction.

The District Court did lack subject-matter jurisdiction over King's FTCA claims. In most cases, a plaintiff's failure to state a claim under Rule 12(b)(6) does not deprive a federal court of subject-matter jurisdiction. See *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 89 (1998). "Dismissal for lack of subject-matter jurisdiction . . . is proper only when the claim is so . . . 'completely devoid of merit as not to involve a federal controversy.'" *Ibid.* However, a plaintiff must plausibly allege all jurisdictional elements. See, *e. g.*, *Dart Cherokee Basin Operating Co.* v. *Owens*, 574 U. S. 81, 89 (2014). And in the unique context of the FTCA, all elements of a meritorious claim are also jurisdictional. *Meyer*, 510 U. S., at 477. So even though a plaintiff need not *prove* a § 1346(b)(1) jurisdictional element for a court to maintain subject-matter jurisdiction over his claim, see *ibid.*, a plaintiff must plausibly allege all six FTCA elements not only to state a claim upon which relief can be

granted but also for a court to have subject-matter jurisdiction over the claim. That means a plaintiff must plausibly allege that "the United States, if a private person, would be liable to the claimant" under state law both to survive a merits determination under Rule 12(b)(6) and to establish subject-matter jurisdiction. § 1346(b)(1). Because King's tort claims failed to survive a Rule 12(b)(6) motion to dismiss, the United States necessarily retained sovereign immunity, also depriving the court of subject-matter jurisdiction.

Ordinarily, a court cannot issue a ruling on the merits "when it has no jurisdiction" because "to do so is, by very definition, for a court to act ultra vires." *Steel Co.*, 523 U. S., at 101–102. But where, as here, pleading a claim and pleading jurisdiction entirely overlap, a ruling that the court lacks subject-matter jurisdiction may simultaneously be a judgment on the merits that triggers the judgment bar.[8] A dismissal for lack of jurisdiction is still a "judgment." See Restatement of Judgments § 49, Comment *a*, at 193–194 (discussing "judgment . . . based on the lack of jurisdiction"). And even though the District Court's ruling in effect deprived the court of jurisdiction, the District Court necessarily passed on the substance of King's FTCA claims. See Part II–B, *supra*. Under the common law, judgments were preclusive with respect to issues decided as long as the court had the power to decide the issue. See Restatement of Judgments § 49, Comment *b*, at 195–196. Because "a federal court always has jurisdiction to determine its own jurisdic-

[8] In cases such as this one where a plaintiff fails to plausibly allege an element that is both a merit element of a claim and a jurisdictional element, the district court may dismiss the claim under Rule 12(b)(1) or Rule 12(b)(6). Or both. The label does not change the lack of subject-matter jurisdiction, and the claim fails on the merits because it does not state a claim upon which relief can be granted. However, in other cases that overlap between merits and jurisdiction may not exist. In those cases, the court might lack subject-matter jurisdiction for nonmerits reasons, in which case it must dismiss the case under just Rule 12(b)(1).

tion," *United States* v. *Ruiz*, 536 U. S. 622, 628 (2002), a federal court can decide an element of an FTCA claim on the merits if that element is also jurisdictional. The District Court did just that with its Rule 12(b)(6) decision.[9]

* * *

We conclude that the District Court's order was a judgment on the merits of the FTCA claims that can trigger the judgment bar. The judgment of the United States Court of Appeals for the Sixth Circuit is reversed.

It is so ordered.

JUSTICE SOTOMAYOR, concurring.

I join the Court's opinion because I agree that the District Court dismissed King's Federal Tort Claims Act (FTCA) claims on the merits. Importantly, the Court does not today decide whether an order resolving the merits of an FTCA claim precludes other claims arising out of the same subject matter in the same suit. Although the parties briefed the issue, it was not the basis of the lower court's decision. See *ante,* at 213, n. 4. I write separately to emphasize that, while many lower courts have uncritically held that the FTCA's judgment bar applies to claims brought in the same action, there are reasons to question that conclusion. This issue merits far closer consideration than it has thus far received.

King argues that the judgment bar merely "supplements common-law claim preclusion by closing a narrow gap," pre-

[9] The District Court did not have the power to issue its summary judgment ruling because that decision was not necessary for the court "to determine its own jurisdiction." *Ruiz*, 536 U. S., at 628. The court should have assessed whether King's FTCA claims plausibly alleged the six elements of § 1346(b)(1) as a threshold matter, and then dismissed those claims for lack of subject-matter jurisdiction once it concluded they were not plausibly alleged. See *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 94–95 (1998).

venting plaintiffs from bringing duplicative litigation against first the United States and then its employees. *Simmons* v. *Himmelreich*, 578 U. S. 621, 630, n. 5 (2016); see also *ibid.* ("At the time that the FTCA was passed, common-law claim preclusion would have barred a plaintiff from suing the United States after having sued an employee but not vice versa"). On petitioners' view, however, the judgment bar provides that any order resolving an FTCA claim automatically precludes separate claims brought in the same action and arising from the same common nucleus of facts. This is a significant departure from the normal operation of common-law claim preclusion, which applies only in separate or subsequent suits following a final judgment. See, *e. g.*, *G. & C. Merriam Co.* v. *Saalfield*, 241 U. S. 22, 29 (1916) ("Obviously, the rule for decision applies only when the subsequent action has been brought").

King raises a number of reasons to doubt petitioners' reading. Looking first to the text, the FTCA's judgment bar is triggered by "[t]he judgment in an action under section 1346(b)." 28 U. S. C. §2676. A "judgment" is "[a] court's final determination of the rights and obligations of the parties in a case." Black's Law Dictionary 1007 (11th ed. 2019); see also 1 H. Black, Law of Judgments §1, p. 2, n. l (1891) ("'A judgment is the final consideration and determination of a court . . . upon the matters submitted to it'"). Decisions disposing of only some of the claims in a lawsuit are not "judgments."

Similarly, once the judgment bar is triggered, it precludes "any action by the claimant." §2676. An "action" refers to the whole of the lawsuit. See Black's Law Dictionary, at 37 (defining "action" as a "civil or criminal judicial proceeding"); Black's Law Dictionary 43 (3d ed. 1933) ("The terms 'action' and 'suit' are now nearly, if not entirely, synonymous"). Individual demands for relief within a lawsuit, by contrast, are "claims." See Black's Law Dictionary, at 311 (2019) (defin-

ing a "claim" as "the part of a complaint in a civil action specifying what relief the plaintiff asks for"); Black's Law Dictionary, at 333 (1933) (defining a "claim" as "any demand held or asserted as of right" or "cause of action").

Thus, giving the judgment bar's two key terms their traditional meanings, "the judgment in an action under section 1346(b)" that triggers the bar is the final order resolving every claim in a lawsuit that includes FTCA claims. When triggered, the judgment bar precludes later "action[s]," not claims in the same suit. So read, the statutory judgment bar "functions in much the same way" as claim preclusion, "with both rules depending on a prior judgment as a condition precedent." *Will* v. *Hallock*, 546 U. S. 345, 354 (2006).[1]

Turning next to the FTCA's purpose and effect, under King's reading, the judgment bar also serves the same, familiar functions as claim preclusion: "avoiding duplicative litigation" by barring repetitive suits against employees without "reflecting a policy that a defendant should be scot free of any liability." *Ibid.* Petitioners' interpretation, by contrast, appears inefficient. Precluding claims brought in the same suit incentivizes plaintiffs to bring separate suits, first against federal employees directly and second against the United States under the FTCA. See *Sterling* v. *United States*, 85 F. 3d 1225, 1228–1229 (CA7 1996) (holding that

[1] Nearby § 2672 could further support this interpretation. That section provides that an administrative settlement with the United States "shall constitute a complete release of any claim against the United States and against the employee of the government" who committed the tort. Unlike the judgment bar, § 2672 uses unambiguous language ("release of any claim") to ensure that settlements with the United States both preclude future litigation and resolve pending claims against federal employees. Had Congress intended to give both provisions the same effect, "it presumably would have done so expressly." *Russello* v. *United States*, 464 U. S. 16, 23 (1983).

judgment in a prior direct action did not preclude a later FTCA suit against the United States).[2]

Petitioners' interpretation also produces seemingly unfair results by precluding potentially meritorious claims when a plaintiff's FTCA claims fail for unrelated reasons. Here, for example, King's constitutional claims require only a showing that the officers' behavior was objectively unreasonable, while the District Court held that the state torts underlying King's FTCA claims require subjective bad faith. If petitioners are right, King's failure to show bad faith, which is irrelevant to his constitutional claims, means a jury will never decide whether the officers violated King's constitutional rights when they stopped, searched, and hospitalized him.

There are, of course, counterarguments. On the text, petitioners point out that it would be strange to refer to the entire lawsuit as "an action under section 1346(b)" even after the Court has decided all the claims brought under the FTCA. Better, they argue, to read "judgment in an action under section 1346(b)" to mean any order resolving all the FTCA claims in the suit. They urge further that claims in the same suit should be among the covered actions because the bar precludes "any action," rather than "subsequent" actions, which is the typical formulation of claim preclusion. As to the judgment bar's purpose, petitioners contend that the FTCA gives tort claimants a choice that comes with a cost: They can sue the United States and access its deeper pockets, but, if they do, then the outcome of the FTCA claims resolves the entire controversy. This preserves federal re-

[2] Some courts have held that precluding claims in the same action prevents plaintiffs from recovering for the same injury from both the United States and the federal employee. The law, however, already bars double recovery for the same injury. See, *e. g., Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 401 U. S. 321, 348 (1971) ("[T]he law . . . does not permit a plaintiff to recover double payment").

sources while allowing tort claimants to decide whether to bring FTCA claims at all.

There are naturally counterarguments to those counterarguments, and so on, but further elaboration here is unnecessary. As the Court points out, "'we are a court of review, not of first view.'" *Ante*, at 213, n. 4 (quoting *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005)). While lower courts have largely taken petitioners' view of the judgment bar, few have explained how its text or purpose compels that result. In my view, this question deserves much closer analysis and, where appropriate, reconsideration.

Syllabus

PEREIDA *v.* WILKINSON, ACTING ATTORNEY GENERAL

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

No. 19–438. Argued October 14, 2020—Decided March 4, 2021

Immigration officials initiated removal proceedings against Clemente Avelino Pereida for entering and remaining in the country unlawfully, a charge Mr. Pereida did not contest. Mr. Pereida sought instead to establish his eligibility for cancellation of removal, a discretionary form of relief under the Immigration and Nationality Act (INA). 8 U. S. C. §§ 1229a(c)(4), 1229b(b)(1). Eligibility requires certain nonpermanent residents to prove, among other things, that they have not been convicted of specified criminal offenses. § 1229b(b)(1)(C). While his proceedings were pending, Mr. Pereida was convicted of a crime under Nebraska state law. See Neb. Rev. Stat. § 28–608 (2008). Analyzing whether Mr. Pereida's conviction constituted a "crime involving moral turpitude" that would bar his eligibility for cancellation of removal, §§ 1182(a)(2)(A)(i)(I), 1227(a)(2)(A)(i), the immigration judge found that the Nebraska statute stated several separate crimes, some of which involved moral turpitude and one—carrying on a business without a required license—which did not. Because Nebraska had charged Mr. Pereida with using a fraudulent social security card to obtain employment, the immigration judge concluded that Mr. Pereida's conviction was likely not for the crime of operating an unlicensed business, and thus the conviction likely constituted a crime involving moral turpitude. The Board of Immigration Appeals and the Eighth Circuit concluded that the record did not establish which crime Mr. Pereida stood convicted of violating. But because Mr. Pereida bore the burden of proving his eligibility for cancellation of removal, the ambiguity in the record meant he had not carried that burden and he was thus ineligible for discretionary relief.

Held: Under the INA, certain nonpermanent residents seeking to cancel a lawful removal order bear the burden of showing they have not been convicted of a disqualifying offense. An alien has not carried that burden when the record shows he has been convicted under a statute listing multiple offenses, some of which are disqualifying, and the record is ambiguous as to which crime formed the basis of his conviction. Pp. 231–243.

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(a) The INA squarely places the burden of proof on the alien to prove eligibility for relief from removal. § 1229a(c)(4)(A). Mr. Pereida accepts his burden to prove three of four statutory eligibility requirements but claims a different rule should apply to the final requirement at issue here—whether he was convicted of a disqualifying offense. Mr. Pereida identifies nothing in the statutory text that singles out that lone requirement for special treatment. The plain reading of the text is confirmed by the context of three nearby provisions. First, the INA specifies particular forms of evidence that "shall constitute proof of a criminal conviction" in "any proceeding under this chapter," regardless of whether the proceedings involve efforts by the government to remove an alien or efforts by the alien to establish eligibility for relief. § 1229a(c)(3)(B). Next, Congress knows how to impose the burden on the government to show that an alien has committed a crime of moral turpitude, see §§ 1229a(c)(3), 1227(a)(2)(A)(i), and yet it chose to flip the burden when it comes to applications for relief from removal. Finally, the INA often requires an alien seeking admission to show "clearly and beyond doubt" that he is "entitled to be admitted and is not inadmissible," § 1229a(c)(2), which in turn requires the alien to demonstrate that he has not committed a crime involving moral turpitude, § 1182(a)(2)(A)(i)(I). Mr. Pereida offers no account why a rational Congress would have placed this burden on an alien who is seeking admission, but lift it from an alien who has entered the country illegally and faces a lawful removal order. Pp. 231–233.

(b) Even so, Mr. Pereida contends that he can carry the burden of showing his crime did not involve moral turpitude using the so-called "categorical approach." Applying the categorical approach, a court considers not the facts of an individual's conduct, but rather whether the offense of conviction necessarily or categorically triggers a consequence under federal law. Under Mr. Pereida's view, because a person could hypothetically violate the Nebraska statute without committing fraud—*i. e.*, by carrying on a business without a license—the statute does not qualify as a crime of moral turpitude. But application of the categorical approach implicates two inquiries—one factual (what was Mr. Pereida's crime of conviction?), the other hypothetical (could someone commit that crime of conviction without fraud?). And the Nebraska statute is divisible, setting forth multiple crimes, some of which the parties agree are crimes of moral turpitude. In cases involving divisible statutes, the Court has told judges to determine which of the offenses an individual committed by employing a "modified" categorical approach, "review[ing] the record materials to discover which of the enumerated alternatives played a part in the defendant's prior conviction." *Mathis* v. *United*

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States, 579 U. S. 500, 513, 517. This determination, like many issues surrounding the who, what, when, and where of a prior conviction, involves questions of historical fact. The party who bears the burden of proving these facts bears the risks associated with failing to do so. This point is confirmed by the INA's terms and the logic undergirding them. A different conclusion would disregard many precedents. See, *e. g.*, *Taylor* v. *United States*, 495 U. S. 575, 600. Just as evidentiary gaps work against the government in criminal cases where it bears the burden, see, *e. g.*, *Johnson* v. *United States*, 559 U. S. 133, they work against the alien seeking relief from a lawful removal order. Congress can, and has, allocated the burden differently. Pp. 233–240.

(c) It is not this Court's place to choose among competing policy arguments. Congress was entitled to conclude that uncertainty about an alien's prior conviction should not redound to his benefit. And Mr. Pereida fails to acknowledge some of the tools Congress seemingly did afford aliens faced with record-keeping challenges. See, *e. g.*, § 1229a(c)(3)(B). Pp. 240–243.

916 F. 3d 1128, affirmed.

GORSUCH, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, ALITO, and KAVANAUGH, JJ., joined. BREYER, J., filed a dissenting opinion, in which SOTOMAYOR and KAGAN, JJ., joined, *post*, p. 243. BARRETT, J., took no part in the consideration or decision of the case.

Brian P. Goldman argued the cause for petitioner. With him on the briefs were *Kory DeClark*, *E. Joshua Rosenkranz*, *David V. Chipman*, *Raul F. Guerra*, *Thomas M. Bondy*, and *Benjamin P. Chagnon*.

Jonathan C. Bond argued the cause for the respondent. With him on the brief were *Solicitor General Francisco*, *Assistant Attorney General Hunt*, *Deputy Solicitor General Kneedler*, *Donald E. Keener*, *John W. Blakeley*, and *Patrick J. Glen*.*

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*Briefs of *amici curiae* urging reversal were filed for Former United States Immigration Judges et al. by *David G. Keyko*; for the Immigrant Defense Project et al. by *Jayashri Srikantiah*; and for the National Association of Criminal Defense Lawyers et al. by *David Lesser*, *Jenny Roberts*, *Joshua L. Dratel*, and *Daniel L. Kaplan*.

Lawrence J. Joseph and *Christopher J. Hajec* filed a brief for the Immigration Reform Law Institute as *amicus curiae* urging affirmance.

Alina Das and *Nancy Morawetz* filed a brief for Immigration Law Professors as *amici curiae*.

JUSTICE GORSUCH delivered the opinion of the Court.

Everyone agrees that Clemente Avelino Pereida entered this country unlawfully, and that the government has secured a lawful order directing his removal. The only remaining question is whether Mr. Pereida can prove his eligibility for discretionary relief.

Under the Immigration and Nationality Act (INA), individuals seeking relief from a lawful removal order shoulder a heavy burden. Among other things, those in Mr. Pereida's shoes must prove that they have not been convicted of a "crime involving moral turpitude." Here, Mr. Pereida admits he has a recent conviction, but declines to identify the crime. As a result, Mr. Pereida contends, no one can be sure whether his crime involved "moral turpitude" and, thanks to this ambiguity, he remains eligible for relief.

Like the Eighth Circuit, we must reject Mr. Pereida's argument. The INA expressly requires individuals seeking relief from lawful removal orders to prove all aspects of their eligibility. That includes proving they do not stand convicted of a disqualifying criminal offense.

I

The INA governs how persons are admitted to, and removed from, the United States. Removal proceedings begin when the government files a charge against an individual, and they occur before a hearing officer at the Department of Justice, someone the agency refers to as an immigration judge. If the proof warrants it, an immigration judge may order an individual removed for, say, entering the country unlawfully or committing a serious crime while here. See 8 U. S. C. §§ 1229a, 1182(a), 1227(a).

Even then, however, an avenue for relief remains. A person faced with a lawful removal order may still ask the Attorney General to "cancel" that order. §§ 1229a(c)(4), 1229b(b)(1). To be eligible for this form of relief, a nonpermanent resident alien like Mr. Pereida must prove four things: (1) he has been present in the United States for at

least 10 years; (2) he has been a person of good moral character; (3) he has not been convicted of certain criminal offenses; and (4) his removal would impose an "exceptional and extremely unusual" hardship on a close relative who is either a citizen or permanent resident of this country. §§ 1229b(b)(1), 1229a(c)(4). Establishing all this still yields no guarantees; it only renders an alien *eligible* to have his removal order cancelled. The Attorney General may choose to grant or withhold that relief in his discretion, limited by Congress's command that no more than 4,000 removal orders may be cancelled each year. § 1229b(e).

This narrow pathway to relief proved especially challenging here. The government brought removal proceedings against Mr. Pereida, alleging that he had entered the country unlawfully and had never become a lawful resident. In reply, Mr. Pereida chose not to dispute that he was subject to removal. Instead, he sought to establish only his eligibility for discretionary relief. At the same time, Mr. Pereida's lawyer explained to the immigration judge that Nebraska authorities were in the middle of prosecuting his client for a crime. Because the outcome of that case had the potential to affect Mr. Pereida's eligibility for cancellation of removal, counsel asked the immigration judge to postpone any further proceedings on Mr. Pereida's application for relief until the criminal case concluded. The immigration judge agreed.

In the criminal case, state authorities charged Mr. Pereida with attempted criminal impersonation. Under Nebraska law, a person commits criminal impersonation if he:

> "(a) Assumes a false identity and does an act in his or her assumed character with intent to gain a pecuniary benefit . . . or to deceive or harm another;
>
> "(b) Pretends to be a representative of some person or organization and does an act in his or her pretended capacity with the intent to gain a pecuniary benefit . . . and to deceive or harm another;

"(c) Carries on any profession, business, or any other occupation without a license, certificate, or other authorization required by law; or

"(d) Without the authorization . . . of another and with the intent to deceive or harm another: (i) Obtains or records . . . personal identifying information; and (ii) Accesses or attempts to access the financial resources of another through the use of . . . personal identifying information for the purpose of obtaining credit, money . . . or any other thing of value." Neb. Rev. Stat. §28–608 (2008) (since amended and moved to Neb. Rev. Stat. §28–638).

Ultimately, Mr. Pereida was found guilty, and this conviction loomed large when his immigration proceedings resumed. Before the immigration judge, everyone accepted that Mr. Pereida's eligibility for discretionary relief depended on whether he could show he had not been convicted of certain crimes, including ones "involving moral turpitude." 8 U. S. C. §§1182(a)(2)(A)(i)(I), 1227(a)(2)(A)(i), 1229b(b)(1)(C). And whatever else one might say about that phrase, the parties took it as given that a crime involving "fraud [as] an ingredient" qualifies as a crime involving "moral turpitude." *Jordan* v. *De George*, 341 U. S. 223, 227 (1951).

The parties' common ground left Mr. Pereida with an uphill climb. As the immigration judge read the Nebraska statute, subsections (a), (b), and (d) each stated a crime involving fraud, and thus each constituted a disqualifying offense of moral turpitude. That left only subsection (c)'s prohibition against carrying on a business without a required license. The immigration judge thought this crime likely did not require fraudulent conduct, but he also saw little reason to think it was the offense Mr. Pereida had committed. The government presented a copy of the criminal complaint against Mr. Pereida showing that Nebraska had charged him

with using a fraudulent social security card to obtain employment. Meanwhile, Mr. Pereida declined to offer any competing evidence of his own. In light of this state of proof, the immigration judge found that Mr. Pereida's conviction had nothing to do with carrying on an unlicensed business in violation of subsection (c) and everything to do with the fraudulent (and thus disqualifying) conduct made criminal by subsections (a), (b), or (d).

Mr. Pereida's efforts to undo this ruling proved unsuccessful. Both the Board of Immigration Appeals (BIA) and the Eighth Circuit agreed with the immigration judge that Nebraska's statute contains different subsections describing different crimes. *Pereida* v. *Barr*, 916 F. 3d 1128, 1131, 1133 (2019). They agreed, too, that subsections (a), (b), and (d) set forth crimes involving moral turpitude, while subsection (c) does not. At the same time, both found the case a little more complicated than the immigration judge thought. While the government's evidence revealed that Nebraska had *charged* Mr. Pereida with using a fraudulent social security card to obtain employment, and while that evidence would "seem to support a finding that the crime underlying [Mr. Pereida's] attempt offense involved fraud or deceit," the BIA and Court of Appeals observed that nothing in the record definitively indicated which statutory subsection Mr. Pereida stood *convicted* of violating. App. to Pet. for Cert. 17a. Still, neither the agency nor the Eighth Circuit could see how the absence of conclusive proof on this score might make a difference. Mr. Pereida bore the burden of proving his eligibility for relief, so it was up to him to show that his crime of conviction did not involve moral turpitude. Because Mr. Pereida had not carried that burden, he was ineligible for discretionary relief all the same.

It is this judgment Mr. Pereida asks us to reverse. In his view, Congress meant for any ambiguity about an alien's prior convictions to work against the government, not the alien. The circuits have disagreed on this question, so we

granted certiorari to resolve the conflict. 589 U. S. 1126 (2019).

II

A

Like any other, Mr. Pereida's claims about Congress's meaning or purpose must be measured against the language it adopted. And there, a shortcoming quickly emerges. The INA states that "[a]n alien applying for relief or protection from removal has the burden of proof to establish" that he "satisfies the applicable eligibility requirements" and that he "merits a favorable exercise of discretion." 8 U. S. C. § 1229a(c)(4)(A). To carry that burden, a nonpermanent resident alien like Mr. Pereida must prove four things, including that he "has not been convicted" of certain disqualifying offenses, like crimes involving moral turpitude. § 1229b(b)(1)(C). Thus any lingering uncertainty about whether Mr. Pereida stands convicted of a crime of moral turpitude would appear enough to defeat his application for relief, exactly as the BIA and Eighth Circuit held.

It turns out that Mr. Pereida actually agrees with much of this. He accepts that he must prove three of the four statutory eligibility requirements (his longstanding presence in the country, his good moral character, and extreme hardship on a relative). He does not dispute that ambiguity on these points can defeat his application for relief. It is *only* when it comes to the final remaining eligibility requirement at issue here—whether he was convicted of a disqualifying offense—that Mr. Pereida insists a different rule should apply. Yet, he identifies nothing in the statutory text singling out this lone requirement for special treatment. His concession that an alien must show his good moral character undercuts his argument too. Ambiguity about a conviction for a crime involving moral turpitude would seem to defeat an assertion of "good moral character." Cf. 8 U. S. C. § 1101(f)(3). And if that's true, it's hard to see how the same ambiguity could

help an alien when it comes to the closely related eligibility requirement at issue before us.

What the statute's text indicates, its context confirms. Consider three nearby provisions. First, the INA specifies particular forms of evidence that "shall constitute proof of a criminal conviction," including certain official records of conviction, docket entries, and attestations. § 1229a(c)(3)(B). These rules apply to "any proceeding under this chapter" regardless whether the proceedings happen to involve efforts by the government to remove an alien or efforts by an alien to obtain relief. *Ibid.* In this way, the INA anticipates both the need for proof about prior convictions and the fact an alien sometimes bears the burden of supplying it.

Next, when it comes to "removal proceedings," the INA assigns the government the "burden" of showing that the alien has committed a crime of moral turpitude in certain circumstances. See §§1229a(c)(3), 1227(a)(2)(A)(i). But the burden flips for "[a]pplications for relief from removal," like the one at issue in this case. § 1229a(c)(4). These statutory features show that Congress knows how to assign the government the burden of proving a disqualifying conviction. And Congress's decision to do so in some proceedings, but not in proceedings on an alien's application for relief, reflects its choice that these different processes warrant different treatment.

Finally, the INA often requires an alien applying for admission to show "clearly and beyond doubt" that he is "entitled to be admitted and is not inadmissible." § 1229a(c)(2)(A). As part of this showing, an alien must demonstrate that he has not committed a crime involving moral turpitude. § 1182(a)(2)(A)(i)(I). In this context, it is undisputed that an alien has the burden of proving that he has not committed a crime of moral turpitude. And Mr. Pereida has offered no account why a rational Congress might wish to place this burden on an alien seeking admission to

this country, yet lift it from an alien who has entered the country illegally and is petitioning for relief from a lawful removal order.[1]

B

Confronted now with a growing list of unhelpful textual clues, Mr. Pereida seeks to shift ground. Even if he must shoulder the burden of proving that he was not convicted of a crime involving moral turpitude, Mr. Pereida replies, he can carry that burden thanks to the so-called "categorical approach."

The Court first discussed the categorical approach in the criminal context, but it has since migrated into our INA cases. Following its strictures, a court does not consider the facts of an individual's crime as he actually committed it. Instead, a court asks only whether an individual's crime of conviction necessarily—or categorically—triggers a particular consequence under federal law. The categorical approach is required, we have said, because the language found in statutes like the INA provision before us don't task courts with examining whether an individual's *actions* meet a federal standard like "moral turpitude," but only whether the individual "has. . . been convicted of an *offense*" that does so. §§ 1229b(b)(1)(C) (emphasis added), 1227(a)(2)(A)(i); *Taylor* v. *United States*, 495 U. S. 575, 600 (1990); *Leocal* v. *Ashcroft*, 543 U. S. 1, 7 (2004); *United States* v. *Davis*, 588 U. S. 445, 455–457 (2019).[2]

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[1] The dissent does not seriously dispute any of this, but brushes it aside as having "little or n[o]" importance only because of the "categorical approach" discussed in the next section. *Post*, at 243 (opinion of BREYER, J.).

[2] Nothing requires Congress to employ the categorical approach. Instead of focusing our attention on the question whether an offense of conviction meets certain criteria, Congress could have (and sometimes has) used statutory language requiring courts to ask whether the defendant's actual conduct meets certain specified criteria. See, *e. g.*, *Nijhawan* v. *Holder*, 557 U. S. 29, 41 (2009).

In Mr. Pereida's view, the categorical approach makes all the difference. It does so because Nebraska's statute criminalizes at least some conduct—like carrying on a business without a license—that doesn't necessarily involve fraud. So what if Mr. Pereida *actually* committed fraud? Under the categorical approach, that is beside the point. Because a person, hypothetically, *could* violate the Nebraska statute without committing fraud, the statute does not qualify as a crime involving moral turpitude. In this way, Mr. Pereida submits, he can carry any burden of proof the INA assigns him.

This argument, however, overstates the categorical approach's preference for hypothetical facts over real ones. In order to tackle the *hypothetical* question whether one might complete Mr. Pereida's offense of conviction without doing something fraudulent, a court must have some idea what his *actual* offense of conviction was in the first place. And to answer that question, courts must examine historical facts. No amount of staring at a State's criminal code will answer whether a particular person was convicted of any particular offense at any particular time. Applying the categorical approach thus implicates two inquiries—one factual (what was Mr. Pereida's crime of conviction?), the other hypothetical (could someone commit that crime of conviction without fraud?).[3]

The factual inquiry can take on special prominence when it comes to "divisible" statutes. Some statutes state only a single crime, often making it a simple thing for a judge to conclude from a defendant's criminal records that he was convicted of violating statute x and thus necessarily con-

[3] It is unclear where the dissent stands on this point. In places, the dissent seems to suggest that no "threshold" factual question exists here. *Post*, at 252. Elsewhere, the dissent appears to admit that establishing the "basic fact" of an individual's crime of conviction is a necessary prerequisite to application of the categorical approach. *Post*, at 253. The second view comes closer to the mark.

victed of crime x. Not infrequently, however, a single criminal statute will list multiple, stand-alone offenses, some of which trigger consequences under federal law, and others of which do not. To determine exactly which offense in a divisible statute an individual committed, this Court has told judges to employ a "modified" categorical approach, "review[ing] the record materials to discover which of the enumerated alternatives played a part in the defendant's prior conviction." *Mathis* v. *United States*, 579 U. S. 500, 513, 517 (2016). In aid of the inquiry, we have said, judges may consult "a limited class of documents (for example, the indictment, jury instructions, or plea agreement and colloquy) to determine what crime, with what elements, a defendant was convicted of." *Id.*, at 505–506.

These nuances expose the difficulty with Mr. Pereida's argument. Both he and the government accept that Nebraska's attempted criminal impersonation statute is divisible because it states no fewer than four separate offenses in subsections (a) through (d). The immigration judge, BIA, and Eighth Circuit concluded that three of these subsections—(a), (b), and (d)—constitute crimes of moral turpitude. So that left Mr. Pereida with the burden of proving as a factual matter that *his* conviction was for misusing a business license under subsection (c). To be sure, in this Court Mr. Pereida now seeks to suggest that it is also possible for a hypothetical defendant to violate subsection (a) without engaging in conduct that involves moral turpitude under federal law. But even assuming he is right about this, it still left him obliged to show in the proceedings below that he was convicted under subsection (a) or (c) rather than under (b) or (d).

Mr. Pereida failed to carry that burden. Before the immigration judge, he refused to produce any evidence about his crime of conviction even after the government introduced evidence suggesting that he was convicted under a statute setting forth some crimes involving fraud. Nor has Mr. Per-

eida sought a remand for another chance to resolve the ambiguity by introducing evidence about his crime of conviction; at oral argument, he even disclaimed interest in the possibility. See Tr. of Oral Arg. 23–25. These choices may be the product of sound strategy, especially if further evidence would serve only to show that Mr. Pereida's crime of conviction *did* involve fraud. But whatever degree of ambiguity remains about the nature of Mr. Pereida's conviction, and whatever the reason for it, one thing remains stubbornly evident: He has not carried his burden of showing that he was not convicted of a crime involving moral turpitude.

Look at the problem this way. Mr. Pereida is right that, when asking whether a state conviction triggers a federal consequence, courts applying the categorical approach often presume that a conviction rests on nothing more than the minimum conduct required to secure a conviction. But Mr. Pereida neglects to acknowledge that this presumption cannot answer the question *which* crime the defendant was convicted of committing. To answer that question, parties and judges must consult evidence. And where, as here, the alien bears the burden of proof and was convicted under a divisible statute containing some crimes that qualify as crimes of moral turpitude, the alien must prove that his actual, historical offense of conviction isn't among them.[4]

[4] The dissent makes the same mistake. At first, it acknowledges that courts must look to factual evidence to determine which of several offenses in a divisible statute the defendant committed, and even admits we do not know which of the offenses listed in the Nebraska statute Mr. Pereida committed. *Post*, at 246–247, 250–251. But the dissent then does an about-face—treating Nebraska's (divisible) statute as if it states a single offense. *Post*, at 251–252. The dissent had it right the first time. Both sides *agree* that Nebraska's statute is divisible and states (at least) four independent crimes. We do not know which of those crimes formed the basis of Mr. Pereida's conviction because the record is ambiguous, and Mr. Pereida has not supplied anything to clarify it. Mr. Pereida now attempts to benefit from that uncertainty. But *that* proposition is foreclosed by the INA's burden of proof.

The INA's plain terms confirm the point. Recall that the INA places the "burden of proof" on an alien like Mr. Pereida to show four things; that one of these is the absence of a disqualifying conviction; and that the law specifies certain forms of evidence "shall" constitute "proof" of a criminal conviction. See Part II–A, *supra*. In each of these ways, the statutory scheme anticipates the need for evidentiary proof about the alien's crime of conviction and imposes on the alien the duty to present it.[5]

The INA adopts this approach for understandable reasons too. Not only is it impossible to discern an individual's offense of conviction without consulting at least some documentary or testimonial evidence. It's easy to imagine significant factual disputes that make these statutory instructions about the presentation of evidence and the burden of proof critically important. Suppose, for example, that the parties in this case disputed whether the criminal complaint the government introduced involved a *different* Clemente Avelino Pereida. Alternatively, what if Nebraska's complaint charged Mr. Pereida with a violation of sub-

[5] There are other statutory signals that point to the same conclusion. The INA authorizes an immigration judge to make "credibility determination[s]" based on an alien's proof, § 1229a(c)(4)(C); it says the immigration judge must determine whether "testimony is credible, is persuasive, and refers to specific facts sufficient to [discharge] the applicant's burden of proof," § 1229a(c)(4)(B); and the law requires the alien to comply with regulations requiring him to "submit information or documentation" supporting his application for relief, *ibid.* Current regulations indicate that an alien should describe on his application form any prior convictions he may have, Dept. of Justice, Executive Office for Immigration Review, Form EOIR–42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents 5 (Rev. July 2016), https://www.justice.gov/sites/default/files/pages/attachments/2016/10/20/eoir42b.pdf. In all of these additional ways, the INA again anticipates the need for proof and the possibility of its challenge in an application for relief—and nowhere does the statute suggest some special carveout exists when it comes to evidence concerning prior convictions.

section (c) but the plea colloquy mentioned only subsection (d)? Or what if the relevant records were illegible or contained a material typo? Courts can resolve disputes like these only by reference to evidence, which means a statutory allocation of the burden of proof will sometimes matter a great deal.

To reach a different conclusion would require us to cast a blind eye over a good many precedents. When applying the categorical approach, this Court has long acknowledged that to ask what crime the defendant was convicted of committing is to ask a question of fact. See, *e. g.*, *Taylor*, 495 U. S., at 600 (courts look "to the fact that the defendant had been convicted of crimes falling within certain categories"). We have described the modified categorical approach as requiring courts to "review . . . record materials" to determine which of the offenses in a divisible statute the defendant was convicted of committing. *Mathis*, 579 U. S., at 517. We have acknowledged that this process calls on courts to consider "extra-statutory materials" to "discover" the defendant's crime of conviction. *Descamps* v. *United States*, 570 U. S. 254, 263 (2013). We have observed that these "materials will not in every case speak plainly," and that any lingering ambiguity about them can mean the government will fail to carry its burden of proof in a criminal case. *Mathis*, 579 U. S., at 519 (citing *Shepard* v. *United States*, 544 U. S. 13, 21 (2005)). And we have remarked that "the fact of a prior conviction" supplies an unusual and "arguable" exception to the Sixth Amendment rule in criminal cases that "any fact that increases the penalty for a crime" must be proved to a jury rather than a judge. *Apprendi* v. *New Jersey*, 530 U. S. 466, 489, 490 (2000).

Really, this Court has never doubted that the who, what, when, and where of a conviction—and the very existence of a conviction in the first place—pose questions of fact. Nor have we questioned that, like any other fact, the party who

bears the burden of proving these facts bears the risks associated with failing to do so.[6]

The authorities Mr. Pereida invokes do not teach differently. He directs our attention especially to *Moncrieffe* v. *Holder*, 569 U. S. 184 (2013), *Carachuri-Rosendo* v. *Holder*, 560 U. S. 563 (2010), and *Johnson* v. *United States*, 559 U. S. 133 (2010). But the first two cases addressed only the question whether the minimum conduct needed to commit an alien's *known* offense of conviction categorically triggered adverse federal consequences. Neither addressed the threshold factual question at issue here—*which* crime formed the basis of the alien's prior conviction.

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[6] Practice in the criminal and INA contexts comports with practice in other fields too. Often in civil litigation, a party must prove the fact of a prior judgment on a particular claim or the fact of a ruling on a particular issue. And there, as here, the question can turn on the persuasiveness of the proof presented and on whom the burden of proof rests. So, for example, the Restatement (Second) of Judgments, contemplates that parties seeking to assert issue preclusion "ha[ve] the burden of proving" that an "an issue of fact or law" has been "actually litigated and determined by a valid and final judgment." §27, and Comment *f* (1982). And "[i]f it cannot be determined from the pleadings and other materials of record in the prior action what issues, if any, were litigated and determined by the verdict and judgment, extrinsic evidence is admissible to aid in such a determination. Extrinsic evidence may also be admitted to show that the record in the prior action does not accurately indicate what issues, if any, were litigated and determined." *Id.*, Comment *f.*

The dissent suggests its own analogy to contract law. See *post*, at 252. But it never explains why we should look there before the statutory text or the law's customary treatment of judgments. Nor does the analogy succeed even on its own terms. It is "generally a question of fact for the jury whether or not a contract . . . actually exists." 11 R. Lord, Williston on Contracts §30:3, pp. 37–39 (4th ed. 2012). So too, "[w]hen a written contract is ambiguous, its meaning is a question of fact," which may require looking to "relevant extrinsic evidence." *Id.*, §30:7, at 116, 124. Similarly here, disputes about the existence of Mr. Pereida's conviction and its ambiguous meaning involve at least some questions of fact requiring resort to proof.

The final case is no more helpful to Mr. Pereida. *Johnson* involved a criminal prosecution under the Armed Career Criminal Act (ACCA) in which the government bore the burden of proof. There, "nothing in the record" indicated which of several crimes in a divisible statute the defendant had been convicted of committing. *Id.*, at 137. Accordingly, if it wished to win certain sentencing enhancements, the government had to show that *all* of the statute's offenses met the federal definition of a "'violent felony.'" *Ibid.* Here, by contrast, Mr. Pereida bears the burden of proof and the same logic applies to him. We do not doubt that, when the record is silent on which of several crimes in a divisible statute an alien committed, he might succeed by showing that *none* of the statute's offenses qualifies as a crime of moral turpitude. It's simply that this avenue wasn't open to Mr. Pereida. No one before us questions that Nebraska's statute contains *some* crimes of moral turpitude under federal law. Given this, it necessarily fell to Mr. Pereida to show that his actual offense was not among these disqualifying offenses. And just as evidentiary gaps work against the government in criminal cases, they work against the alien seeking relief from a lawful removal order. When it comes to civil immigration proceedings, Congress can, and has, allocated the burden differently.[7]

C

This leaves Mr. Pereida to his final redoubt. Maybe the INA works as we have described. But, Mr. Pereida worries, acknowledging as much would invite "grave practical difficulties." Brief for Petitioner 43. What if the alien's record

[7] The dissent asserts that the ACCA and INA have a "shared text and purpose." *Post*, at 256. In fact, however, the ACCA and INA provision at issue here bear different instructions. Both may call for the application of the categorical approach. But while the ACCA's categorical approach demands certainty from the government, the INA's demands it from the alien. See *post*, at 247–248.

of conviction is unavailable or incomplete through no fault of his own? To deny aliens relief only because of poor state court record-keeping practices would, he submits, make for inefficient and unfair public policy. The dissent expands on these same policy arguments at length. See *post*, at 256–259.

Notably, though, neither Mr. Pereida nor the dissent suggests that record-keeping problems attend *this* case. Mr. Pereida's immigration proceedings progressed in tandem with his criminal case, so it is hard to imagine how he could have been on better notice about the need to obtain and preserve relevant state court records about his crime. Represented by counsel in both proceedings, he had professional help with these tasks too. We know that relevant records were created, as well, because the government submitted documents outlining the charges brought against him. Despite all this, Mr. Pereida simply declined to insist on clarity in his state court records or supply further evidence.

Still, even accepting that graver record-keeping problems will arise in *other* cases, it is not clear what that might tell us. Record-keeping problems promise to occur from time to time regardless who bears the burden of proof. And, as in most cases that come our way, both sides can offer strong policy arguments to support their positions. Mr. Pereida and the dissent say fairness and efficiency would be better served if the government bore the risk of loss associated with record-keeping difficulties. Meanwhile, the government contends that it is important for the burden of proof to rest with the alien so those seeking discretionary relief cannot gain a tactical advantage by withholding or concealing evidence they possess about their own convictions. It is hardly this Court's place to pick and choose among competing policy arguments like these along the way to selecting whatever outcome seems to us most congenial, efficient, or fair. Our license to interpret statutes does not include the power to engage in such freewheeling judicial policymaking. Congress was entitled to conclude that uncertainty about an

alien's prior conviction should not redound to his benefit. Only that policy choice, embodied in the terms of the law Congress adopted, commands this Court's respect.

It seems, too, that Mr. Pereida may have overlooked some of the tools Congress afforded aliens faced with record-keeping challenges. In the criminal context, this Court has said that judges seeking to ascertain the defendant's crime of conviction should refer only to a "limited" set of judicial records. *Shepard*, 544 U. S., at 20–23. In part, the Court has circumscribed the proof a judge may consult out of concern for the defendant's Sixth Amendment right to a trial by jury. If a judge, rather than a jury, may take evidence and make findings of fact, the thinking goes, the proceeding should be as confined as possible. *Id.*, at 25–26; see also *Apprendi*, 530 U. S., at 487–490 (citing *Almendarez-Torres* v. *United States*, 523 U. S. 224 (1998)). But Sixth Amendment concerns are not present in the immigration context. And in the INA, Congress has expressly authorized parties to introduce a much broader array of proof when it comes to prior convictions—indicating, for example, that a variety of records and attestations "shall" be taken as proof of a prior conviction. 8 U. S. C. § 1229a(c)(3)(B). Nor is it even clear whether these many listed forms of proof are meant to be the only permissible ways of proving a conviction, or whether they are simply assured of special treatment when produced. Cf. n. 5, *supra*. Mr. Pereida acknowledges none of this, again perhaps understandably if further evidence could not have helped his cause. Still, it is notable that Congress took significant steps in the INA to ameliorate some of the record-keeping problems Mr. Pereida discusses by allowing aliens considerably more latitude in carrying their burden of proof than he seems to suppose.

*

Under the INA, certain nonpermanent aliens seeking to cancel a lawful removal order must prove that they have not

been convicted of a disqualifying crime. The Eighth Circuit correctly held that Mr. Pereida failed to carry this burden. Its judgment is

Affirmed.

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

JUSTICE BREYER, with whom JUSTICE SOTOMAYOR and JUSTICE KAGAN join, dissenting.

This case, in my view, has little or nothing to do with burdens of proof. It concerns the application of what we have called the "categorical approach" to determine the nature of a crime that a noncitizen (or defendant) was previously convicted of committing. That approach sometimes allows a judge to look at, and to look *only* at, certain specified documents. Unless those documents show that the crime of conviction *necessarily* falls within a certain category (here a "crime involving moral turpitude"), the judge must find that the conviction was not for such a crime. The relevant documents in this case do not show that the previous conviction at issue necessarily was for a crime involving moral turpitude. Hence, applying the categorical approach, it was not. That should be the end of the case.

I

Mr. Pereida is a citizen of Mexico, not the United States. He has lived in the United States for roughly 25 years. In that time, he and his wife have raised three children. He helped support them by working in construction and cleaning. One child is a U. S. citizen. In 2009 the Department of Homeland Security issued a notice to appear that charged Mr. Pereida with removability because he was never lawfully admitted to the United States. Mr. Pereida conceded that he is removable. But he asked the Attorney General to cancel his removal. The Attorney General has discretion to cancel an order of removal if removal would result in ex-

treme hardship to the noncitizen's U. S. citizen (or lawful-permanent-resident) spouse, parent, or child. 8 U. S. C. § 1229b(b)(1)(D). A noncitizen is ineligible for this discretionary relief, however, if, among other things, he has "been convicted of" a "crime involving moral turpitude." §§ 1229b(b)(1)(C), 1182(a)(2)(A)(i)(I).

Mr. Pereida, in 2010, pleaded *nolo contendere* to, and was found guilty of, having committed a Nebraska state crime, namely, attempt to commit criminal impersonation in violation of Neb. Rev. Stat. § 28–608. See § 28–608 (2008) (since amended and moved to § 28–638 (2020)); § 28–201(1)(b). The question here is whether this conviction was for a "crime involving moral turpitude."

II

A

I believe we must answer this question by applying what we have called the "categorical approach." The Immigration and Nationality Act (INA) makes a noncitizen ineligible for cancellation of removal if that noncitizen has been "convicted" of certain "offense[s]," 8 U. S. C. § 1229b(b)(1)(C), including "crime[s] involving moral turpitude," § 1182(a)(2)(A)(i)(I). Similarly, the Armed Career Criminal Act (ACCA) increases the sentence of a defendant convicted of possessing a firearm as a felon if that defendant has three or more previous "convictions" for a "violent felony" or "serious drug offense." 18 U. S. C. § 924(e)(1). In ordinary speech, "crime," "offense," and "felony" are ambiguous: They might refer to actions that a defendant took on a particular occasion, or they might refer to the general conduct that a criminal statute forbids. So the question arises, shall a judge look to how the noncitizen or defendant behaved on a particular occasion (for example, to see whether he behaved violently)? Or shall a judge look to the statute that the defendant was convicted of violating (to see whether the behavior that it forbids is categorically violent)?

We have answered this question clearly and repeatedly in both the INA and ACCA contexts. We have held that both statutes mandate a categorical approach by asking what offense a person was "*convicted*" of, not what acts he "*committed*." *Moncrieffe* v. *Holder*, 569 U. S. 184, 191 (2013) (emphasis added) (discussing the INA); see also *Taylor* v. *United States*, 495 U. S. 575, 600 (1990) (discussing ACCA). The categorical approach requires courts to "loo[k] only to the statutory definitions of the prior offenses, and not to the particular facts underlying those convictions." *Id.*, at 600; see also *Esquivel-Quintana* v. *Sessions*, 581 U. S. 385, 389 (2017) (applying the categorical approach under the INA); *Mellouli* v. *Lynch*, 575 U. S. 798, 804–806 (2015) (same); *Moncrieffe*, 569 U. S., at 190 (same); *Carachuri-Rosendo* v. *Holder*, 560 U. S. 563, 576 (2010) (same); *Gonzales* v. *Duenas-Alvarez*, 549 U. S. 183, 185–186 (2007) (same); *Mathis* v. *United States*, 579 U. S. 500, 504–505 (2016) (applying the categorical approach under ACCA); *Johnson* v. *United States*, 559 U. S. 133, 144 (2010) (same); *Descamps* v. *United States*, 570 U. S. 254, 257 (2013) (same); *Shepard* v. *United States*, 544 U. S. 13, 19–20 (2005) (same); *Taylor*, 495 U. S., at 600 (same). A judge, looking at a prior conviction, will read the statutory definition of the offense of conviction and decide whether anyone convicted under that offense is necessarily guilty of the type of crime that triggers federal penalties, *e. g.*, an enhanced sentence or ineligibility for cancellation of removal. See *Mellouli*, 575 U. S., at 805; *Taylor*, 495 U. S., at 600.

Consider a hypothetical example of this approach. Suppose a noncitizen's previous conviction was for violating State Statute § 123. Suppose further that the Government argues the noncitizen is ineligible for cancellation of removal because he was "convicted of an offense under" § 1227(a)(2), namely, an "aggravated felony." 8 U. S. C. §§ 1229b(b)(1)(C), 1227(a)(2)(A)(iii). An immigration judge, looking at the conviction, will simply read § 123 and decide whether anyone

convicted under § 123 is necessarily guilty of an aggravated felony, as that term is defined in the INA. See § 1101(a)(43). That is, the judge will decide whether the conduct that § 123 prohibits is in general an aggravated felony. The judge will *not* look to see whether the defendant's actual conduct on the relevant occasion was or was not an aggravated felony.

Difficult questions can arise when judges apply the categorical approach. State statutes criminalize many kinds of behavior, often differing in detail one from another. Take burglary, for example, which is an "aggravated felony" under the INA. § 1101(a)(43)(G). We can assume that the term "burglary" here, as in ACCA, refers to a specific crime, *i. e.*, generic burglary. See *Taylor*, 495 U. S., at 599; cf. *Duenas-Alvarez*, 549 U. S., at 189 (accepting that the INA's reference to "theft" in § 1101(a)(43)(G) is to generic theft). Generic burglary is "unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime." *Taylor*, 495 U. S., at 599. Now suppose that § 123 defines "burglary" in a different way (say, by including lawful entry with intent to steal). The sentencing judge then must compare the elements of the state statute and the elements of generic burglary. If the minimum conduct criminalized by the state statute is encompassed by generic burglary, then the conviction is for generic burglary; if not, then the conviction is not for that aggravated felony. See *Moncrieffe*, 569 U. S., at 190–191. In our § 123 example, the judge would therefore conclude that the conviction is not for an aggravated felony.

And what is a judge to do if a state statute is "divisible" into several different offenses, some of which are aggravated felonies and some of which are not? Suppose, for example, that § 123 has three subsections referring to (a) burglary of a dwelling, (b) burglary of a boat, and (c) burglary of a railroad car. Since generic burglary is of a dwelling or structure, only subsection (a) qualifies as an aggravated felony. How is the judge to know *which* subsection the defend-

ant was convicted of violating? Simple, we have replied. Under the "modified categorical approach," the judge can look to a limited set of court records to see if they say which subsection the defendant was convicted of violating. The judge can look at the charging papers and the jury instructions (if there was a jury), see *Taylor*, 495 U. S., at 602, and the plea agreement, plea colloquy, or "some comparable judicial record" of the plea (if there was a plea), *Shepard*, 544 U. S., at 26; see also *Nijhawan* v. *Holder*, 557 U. S. 29, 35 (2009) (quoting *Shepard*, 544 U. S., at 26). If these documents reveal that the previous conviction was for § 123(a) (dwelling), then, and only then, can the judge conclude that the conviction is for an aggravated felony. As we explained in *Taylor*, the modified categorical approach "allow[s]" "the Government . . . to use [a] conviction" under an overbroad statute to trigger federal penalties (there, ACCA's sentencing enhancement) if the statute contains multiple offenses *and* the permissible documents show that "the jury necessarily had to find" (or the defendant necessarily admitted to) a violent felony. 495 U. S., at 602.

What if, after looking at all the sources we have listed, the judge still does not know which of the three different kinds of burglary was the basis for the conviction? Suppose all the relevant documents that exist speak *only* of a violation of § 123. Period. What then? As discussed *infra*, at 250–251, that is the question we face here, and our cases provide the answer. The judge cannot look at evidence beyond the specified court records. See, *e. g.*, *Mathis*, 579 U. S., at 519. Instead, in such a case, the judge is to determine what the defendant necessarily admitted (or what a jury necessarily found) in order for a court to have entered a conviction under § 123, since that is the conviction reflected in the permissible documents.

The purpose of the modified categorical approach, like the categorical approach it helps implement, is to compare what "was necessarily found or admitted" to the elements of the

generic federal offense. *Id.*, at 505. If the record materials do not specify that the defendant was convicted of § 123(a) (dwelling) rather than § 123(b) (boat) or § 123(c) (railroad car), or if the record materials do not exist at all, then the sentencing judge cannot say that generic burglary was necessarily found or admitted. The Court has said as much before. In *Shepard*, the Court acknowledged that both the "vagaries of abbreviated plea records" and the destruction of "stenographic notes" of a jury charge would preclude the application of ACCA. 544 U. S., at 22. In *Mathis*, the Court explained that if the "record materials" do not "speak plainly," then "a sentencing judge will not be able to satisfy '*Taylor*'s demand for certainty' when determining whether a defendant was convicted of a generic offense." 579 U. S., at 519. And we applied this principle in *Johnson*, holding that a prior conviction did not count as a "violent felony" under ACCA because the statute of conviction swept more broadly than a "violent felony" and "nothing in the record of [the] conviction permitted the District Court to conclude that it rested upon anything more than the least of th[e] acts" prohibited by the state statute. See 559 U. S., at 137; see also *id.*, at 145 ("[I]n many cases state and local records from" state convictions "will be incomplete" and "frustrate application of the modified categorical approach").

That is to say, if (as far as the available, listed documents reveal) the judge could have entered the conviction without the noncitizen admitting to burglarizing a dwelling, then the immigration judge cannot hold that the conviction is necessarily for an aggravated felony. Applying the categorical approach, the judge must find the conviction is not for an aggravated felony at all.

B

Why would Congress have chosen such a seemingly complicated method? The method would appear sometimes to lead to counterintuitive results. After all, if the prior crime is for burglary and the offense occurred in a small town near

the Mojave Desert, it seems unlikely that the conviction was based on burglary of a boat. Yet, in the absence of an indication from the permissible documents that the conviction necessarily was for burglary of a dwelling, the judge cannot classify the crime of conviction as an "aggravated felony."

The primary reason for choosing this system lies in practicality. Immigration judges and sentencing judges have limited time and limited access to information about prior convictions. See *Mellouli*, 575 U. S., at 806; *Moncrieffe*, 569 U. S., at 200–201; *Shepard*, 544 U. S., at 23, n. 4. The vast majority of prior convictions reflect simple guilty pleas to the crime charged, and, where the record papers are silent, efforts to uncover which of several crimes was "really" at issue can force litigation that the guilty plea avoided. Suppose that the defendant in the Mojave Desert pleaded guilty to a violation of § 123 and there is no indication in the relevant record documents which subsection was the basis for the conviction. To find out which of the several provisions was the basis for the conviction, it might be necessary to call as witnesses the defendant, the prosecutor, or even the judge, and question them about a criminal proceeding that perhaps took place long ago. To make his case, the defendant might now deny that the provision involving a dwelling was at issue, and he might seek the opportunity to prove that. As a result, the immigration judge or sentencing judge now might have to conduct the very fact-based proceeding that the earlier guilty plea was designed to avoid. See *id.*, at 21–23.

I do not know how often this kind of counterintuitive example will arise. But I do know that, in such a case, there is a safeguard against the harms that the "prior conviction" provisions are designed to stop. In the INA context, if a noncitizen is eligible for cancellation of removal, the Attorney General has *discretionary* power to cancel the removal order. Where he believes the noncitizen in fact previously burgled a dwelling (or worse), he can simply deny relief.

And in the ACCA context, a sentencing judge, even where ACCA is inapplicable, has some discretion in determining the length of a sentence. If he finds that the present defendant in fact burgled, say, a dwelling and not a boat, he can take that into account even if the sentencing enhancement does not apply.

And most importantly, whatever the costs and benefits of the categorical approach, it is what Congress has long chosen with respect to both statutes. The categorical approach has a particularly "long pedigree in our Nation's immigration law," tracing back to 1913. *Moncrieffe*, 569 U. S., at 191. As the majority acknowledges, "Congress could have (and sometimes has) used statutory language requiring courts to ask whether the defendant's actual conduct meets certain specified criteria." *Ante*, at 233, n. 2. But it has not done so in the INA provision here. See *ante*, at 233. Thus, here, as in the case of ACCA, a judge must ask whether "a *conviction* of the state offense '"necessarily" involved . . . facts equating to'" the kind of behavior that the relevant federal statute forbids. *Moncrieffe*, 569 U. S., at 190 (emphasis added). Only if it did does that conviction trigger federal penalties.

III

Now, let us apply the categorical approach to the conviction here at issue. The criminal complaint says that Mr. Pereida "intentionally engage[d] in conduct which . . . constituted a substantial step in a course of conduct intended to culminate in his commission of the crime of CRIMINAL IMPERSONATION R.S. 28–608, Penalty: Class IV Felony." App. to Brief for Petitioner 7a. It then quotes the entire criminal-impersonation statute, including all of its parts. See *id.*, at 7a–8a. The complaint does not say which part of the statutory provision the State accuses Mr. Pereida of violating. And the majority, like the Government, concedes that some of the provisions set forth crimes that are not

crimes involving moral turpitude. See *ante*, at 235; Brief for Respondent 15.

The journal entry and order related to the charge do not help. They say only that Mr. Pereida pleaded "no contest" to the crime charged, identifying the relevant statute as Neb. Rev. Stat. §28–201 (the attempt provision) and describing the charge as "[a]ttempt of a class 3A or class 4 felo[ny]." App. to Brief for Petitioner 3a. They do not narrow down the possible offenses because all the criminal impersonation offenses can be a Class III or Class IV felony. See Neb. Rev. Stat. §§28–608(2)(a), (b). We cannot look to jury instructions because there was no jury. Nor is there any plea agreement, plea colloquy, or "comparable judicial record" of the plea that might help determine what Mr. Pereida admitted.

As far as we know, all appropriate documents that exist were before the Immigration Judge. None shows that Mr. Pereida's conviction *necessarily* involved facts equating to a crime involving moral turpitude. He may have pleaded guilty to a crime involving moral turpitude or he may not have. We do not know. The Immigration Judge thus cannot characterize the conviction as a conviction for a crime involving moral turpitude. That resolves this case.

IV

How does the majority argue to the contrary? The majority says that this case is different because which crime was the basis of a prior conviction is a factual question that the categorical approach cannot answer and a noncitizen seeking cancellation of removal, unlike a criminal defendant, bears the burden of proof on that factual question.

First, the majority says that what the defendant's "*actual* offense of conviction was," is a "threshold factual" question that a court must resolve before tackling the categorical approach's "*hypothetical* question" (could someone complete

the offense of conviction without committing a crime involving moral turpitude). *Ante*, at 233–234, 239. In my view, there is no unresolved "threshold factual" question in this case since there is no dispute that Mr. Pereida has a prior conviction. We have made clear that unless the offense of conviction, as determined from the statute and the specified documents, is *necessarily* a crime involving moral turpitude, the judge must rule that the conviction was not for a crime involving moral turpitude. The method for determining the offense of conviction (the modified categorical approach) "acts not as an exception, but instead as a tool," retaining "the categorical approach's central feature." *Descamps*, 570 U. S., at 263. Here, looking at the pertinent documents, we can conclude only that Mr. Pereida pleaded guilty to the minimum conduct necessary to complete an offense under Neb. Rev. Stat. §28–608. Thus, the issue is whether someone could complete *that* offense without committing a crime involving moral turpitude.

This question is the central question the categorical approach resolves, not a threshold question. And it is a legal question, not a factual one. To answer it, the judge is to examine the state statute and limited portions of the record that our cases specify and determine from those documents whether the crime of conviction was a crime involving moral turpitude. There is nothing at all unusual about referring to a question that a judge must answer based on specified legal documents before him as a "question of law." To the contrary, construction of written instruments such as deeds, contracts, tariffs, or patent claims "often presents a 'question solely of law.'" *Teva Pharmaceuticals USA, Inc.* v. *Sandoz, Inc.*, 574 U. S. 318, 326 (2015). And legal questions are not affected by a burden of proof. See, *e. g.*, *Microsoft Corp.* v. *i4i L. P.*, 564 U. S. 91, 100, n. 4 (2011).

The majority points out that we have occasionally referred to the "'fact of a prior conviction.'" *Ante*, at 238. The majority reads too much into that reference. All that we have

seriously referred to as a fact is the "*mere* fact of conviction." *Taylor*, 495 U. S., at 602 (emphasis added). Establishing that basic fact is, of course, a prerequisite to application of the categorical approach at all. It goes to "the validity of a prior judgment of conviction." *Apprendi* v. *New Jersey*, 530 U. S. 466, 496 (2000). But the mere fact of conviction is not at issue here. Instead, the question here (and the question the categorical approach asks) is "what [that] conviction *necessarily* established." *Mellouli*, 575 U. S., at 806. We have referred to *that* question as a "legal question." *Ibid.* And rightly so. Thus, if the majority applies the categorical approach, it should agree that there is no factual dispute in this case for any burden of proof to resolve. If the majority does not apply the categorical approach, it does not explain that or why.

Second, the majority points to statutory language stating that an applicant for relief from removal "has the burden of proof to establish" that he "satisfies the applicable eligibility requirements," § 1229a(c)(4)(A), which includes the requirement that he not have been convicted of a crime involving moral turpitude. See *ante*, at 231. But burdens of proof have nothing to do with this case. As just discussed, because the categorical approach conclusively resolves the ambiguity as to which offense was the basis for the conviction, there is no role for the burden of proof to play. Indeed, the Government agreed at argument that the burden of proof would not apply "if this were just a categorical approach case." Tr. of Oral Arg. 53. That this case implicates the modified categorical approach rather than the categorical approach does not make a difference. The modified categorical approach, like the categorical approach, provides a conclusive answer without any resort to burdens of proof. It does so not by "treating [a] (divisible) statute as if it states a single offense," *ante*, at 236, n. 4, but by permitting courts to look at only certain conclusive records of a conviction to determine what that conviction necessarily involved.

This conclusion is consistent with the text. The statutory text itself "singl[es] out this lone requirement for special treatment," *ante*, at 231, by using a term ("conviction") that requires application of a categorical rather than factual analysis. The burden-of-proof provision does not require departing from our settled understanding of the meaning of that term. That the categorical approach applies does not mean that the burden of proof is entirely irrelevant to the requirement that a noncitizen not have a disqualifying prior conviction. The burden of proof may be relevant when "the existence of [a] conviction" is in doubt. See §§ 1229a(c)(3)(B)(iii), (iv), (vi). Such doubt may have arisen, for example, if Mr. Pereida had contested that a complaint submitted by the Government actually resulted in a conviction or contended that the conviction is against a different Clemente Avelino Pereida. See *ante*, at 237. There is no such doubt in this case. No one disputes that Mr. Pereida has a prior conviction. The parties apparently presented the judge with all the existing relevant documentary material of that conviction. This case concerns a different question: Given the fact of Mr. Pereida's conviction, was it necessarily for a crime involving moral turpitude? The law instructs the judge how to determine, looking at only a limited set of material, whether the crime of conviction is or is not a crime involving moral turpitude. Because of the categorical approach, there is nothing left for a party to prove.

In my view, the "textual clues" and "statutory signals" relied on by the majority further demonstrate that burdens of proof are not relevant to the question at hand. See *ante*, at 233, 237, n. 5. As the majority points out, the INA sets forth a list of particular materials that, the INA says, "shall constitute proof of a criminal conviction." § 1229a(c)(3)(B). They include an "official record of judgment and conviction," an "official record of plea, verdict, and sentence," a "docket entry from court records that indicates the existence of the conviction," court minutes of a "transcript . . . in which the

court takes notice of the existence of the conviction," an official "abstract of a record of conviction" that indicates "the charge or section of law violated" (among certain other things), and any other "document or record attesting to the conviction" prepared or kept by the court or by a "penal institution." *Ibid.* The majority also notes that the INA authorizes an immigration judge to make "credibility determination[s]" about a noncitizen's written and oral proof and determine whether "testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant has satisfied the applicant's burden of proof." §§ 1229a(c)(4)(B), (C). As the majority concedes, this evidence is broader than what we have permitted in our modified categorical approach cases. See *ante*, at 242.

I agree with the majority that bearing the burden of proof goes hand in hand with being able to introduce this evidence. But in my view, Mr. Pereida cannot introduce this evidence because it goes beyond the limited record our precedents allow. Hence, he must not bear the burden of proof. The majority's response is that there is no limitation on the documents an immigration judge can look at when applying the categorical approach. That is because, the majority says, the limitation was adopted in the criminal context out of a concern for Sixth Amendment rights that is not present in the immigration context. *Ibid.* That was not, however, our only, or even primary, reason for adopting the limitation. Rather, we limited the documents that a judge can review in order "to implement the object of the statute and avoid evidentiary disputes." *Shepard*, 544 U. S., at 23, n. 4. To be sure, we were there referencing ACCA, not the INA. But the statutes share the relevant object (tying federal penalties to certain convictions, not certain conduct) signaled by the same statutory text ("conviction"). See *Taylor*, 495 U. S., at 600; *Mellouli*, 575 U. S., at 806. The "central feature" of this statutory object is "a focus on the elements, rather than the facts, of a crime." *Descamps*, 570 U. S., at

263. Allowing review of a broad array of evidence is incompatible with this statutory object, even if the judge looks at the evidence only to determine the nature of the offense of which a noncitizen was convicted. See *Shepard*, 544 U. S., at 21–23. I see no reason for the categorical approach to apply differently under the INA than under ACCA given their shared text and purpose. The "'long pedigree'" of the categorical approach in our immigration law further counsels against departing from how we have long understood that approach to work. *Mellouli*, 575 U. S., at 805–806. Although this Court first applied the categorical approach in the criminal context, see *ante*, at 233, courts examining the federal immigration statutes concluded that Congress intended a categorical approach decades before Congress even enacted ACCA. See *Mellouli*, 575 U. S., at 805–806.

At a minimum, I would not hold, in this case, that the categorical approach's limitation on the documents a judge can consult is inapplicable in immigration proceedings. That argument was neither raised nor briefed by the parties. The Government confirmed several times at oral argument that it had not argued that a judge should be allowed to look at a broader array of evidentiary materials because, in its view, that issue was not implicated since no other documents exist. See Tr. of Oral Arg. 34, 46, 56. Without the benefit of briefing and argument, we cannot fully anticipate the consequences of today's decision.

V

The majority does not apply the categorical approach as our cases have explained it and used it. So what happens now? I fear today's decision will result in precisely the practical difficulties and potential unfairness that Congress intended to avoid by adopting a categorical approach.

First, allowing parties to introduce a wide range of documentary evidence and testimony to establish the crime of conviction may undermine the "judicial and administrative

efficiency" that the categorical approach is intended to promote. *Moncrieffe*, 569 U. S., at 200. As we have recognized before, "[a]sking immigration judges in each case to determine the circumstances underlying a state conviction would burden a system in which 'large numbers of cases [are resolved by] immigration judges and front-line immigration officers, often years after the convictions.'" *Mellouli*, 575 U. S., at 806 (alterations in original). The same is true here. In cases where noncitizens are able to introduce evidence of their crime of conviction, immigration judges now may have to hear and weigh testimony from, for example, the prosecutor who charged the noncitizen or the court reporter who transcribed the now-lost plea colloquy. Given the vast number of different state misdemeanors, plea agreements made long ago, cursory state records, and state prosecutors or other officials who have imperfect memories or who have long since departed for other places or taken up new occupations, there is a real risk of adding time and complexity to immigration proceedings. Such hearings may add strain to "our Nation's overburdened immigration courts." *Moncrieffe*, 569 U. S., at 201.

Second, today's decision may make the administration of immigration law less fair and less predictable. One virtue of the categorical approach is that it "enables aliens 'to anticipate the immigration consequences of guilty pleas in criminal court,' and to enter '"safe harbor" guilty pleas [that] do not expose the [alien defendant] to the risk of immigration sanctions.'" *Mellouli*, 575 U. S., at 806 (alterations in original). The majority's approach, on the other hand, may "deprive some defendants of the benefits of their negotiated plea deals." *Descamps*, 570 U. S., at 271. A noncitizen may agree to plead guilty to a specific offense in a divisible statute because that offense does not carry adverse immigration consequences. But in many lower criminal courts, misdemeanor convictions are not on the record. See Brief for National Association of Criminal Defense Lawyers et al. as

Amici Curiae 7–9 (NACDL Brief); Brief for United States in *Johnson* v. *United States*, O. T. 2008, No. 08–6925, p. 43 ("[P]lea colloquies . . . are not always transcribed or otherwise available"). In jurisdictions where misdemeanor convictions are on the record, such records frequently omit key information about the plea and may be destroyed after only a few years. See NACDL Brief 10–16; see also Brief for United States in *Voisine* v. *United States*, O. T. 2014, No. 14–10154, p. 45 ("[R]ecords from closed misdemeanor cases are often unavailable or incomplete"). And even where complete records do exist, noncitizens, who often are unrepresented, detained, or not fluent English speakers, may not have the resources to offer more than their own testimony. See Brief for Immigrant Defense Project et al. as *Amici Curiae* 11–19. Thus, under the majority's approach, noncitizens may lose the benefit of their plea agreements unless their testimony persuades the immigration judge that they pleaded guilty to the lesser offense.

Third, today's decision risks hinging noncitizens' eligibility for relief from removal on the varied charging practices of state prosecutors. In some cases (perhaps even this one), state prosecutors and state courts may treat statutes that list multiple offenses as if they list only one, whether inadvertently or as a matter of practice. See NACDL Brief 13 (explaining that "[a]cross many states and localities, the records of misdemeanor pleas often do not include the statutory subsection or factual basis underlying the conviction"). It sometimes can be challenging to determine whether a fact is an element or a means (and so whether a statute is divisible or not). If a prosecutor mistakes a divisible statute for an indivisible one, she may well not identify which particular offense was the basis for the charge. Some States, including Nebraska, do not require a pleading to identify the alternative means of committing a crime—as opposed to the alternative crimes—on which a conviction is based. See 5 W. La-

Fave, J. Israel, N. King, & O. Kerr, Criminal Procedure § 19.3(a), p. 263 (3d ed. 2007); *State* v. *Brouillette*, 265 Neb. 214, 221, 655 N. W. 2d 876, 884 (2003) ("[T]his court has made clear that certain crimes are single crimes that can be proved under different theories, and that because each alternative theory is not a separate crime, the alternative theories do not require that the crime be charged as separate alternative counts"). When a divisible statute is wrongly treated as indivisible, for whatever reason, records will be "inconclusive" because the defendant was not, as a matter of fact, convicted of any particular alternative crime. It would be unfair for mandatory deportation to result from inconclusive records in these cases.

The Court dismisses these "policy" concerns on the ground that Congress has chosen "to conclude that uncertainty about an alien's prior conviction should not redound to his benefit." *Ante*, at 241–242. But Congress made precisely the opposite choice by tying ineligibility for relief to a noncitizen's "conviction." That text mandates a categorical approach in which uncertainty about a conviction redounds to a noncitizen or defendant's benefit. The approach is underinclusive by design, and the majority's "objection to th[e categorical approach's] underinclusive result is little more than an attack on the categorical approach itself." *Moncrieffe*, 569 U. S., at 205.

Finally, it makes particularly little sense to disregard this core feature of the categorical approach here. See *id.*, at 203–204. As already noted, cancellation of removal is discretionary. Thus, when a conviction is not disqualifying under the categorical approach, the Government may still deny the noncitizen relief. If it turns out that an individual with a record like the one here in fact violated the statute in a reprehensible manner, that can be accounted for during the discretionary phase of the proceedings, when the categorical approach does not apply.

* * *

In my view, the Court should follow Congress' statute. Congress has long provided that immigration courts applying the INA provision here, like sentencing courts applying ACCA, must follow the categorical approach. See *Mellouli*, 575 U. S., at 805–806. Our cases make clear how that approach applies in a case like this one. We should follow our earlier decisions, particularly *Taylor*, *Shepard*, and *Johnson*. And, were we to do so, ineluctably they would lead us to determine that the statutory offense of which Mr. Pereida was "convicted" is not "necessarily" a "crime involving moral turpitude."

Because the Court comes to a different conclusion, with respect, I dissent.

Syllabus

UNITED STATES FISH AND WILDLIFE SERVICE ET AL. *v.* SIERRA CLUB, INC.

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

No. 19–547. Argued November 2, 2020—Decided March 4, 2021

The Environmental Protection Agency (EPA) proposed a rule in 2011 regarding "cooling water intake structures" used to cool industrial equipment. 76 Fed. Reg. 22174. Because aquatic wildlife can become trapped in these intake structures and die, the Endangered Species Act of 1973 required the EPA to consult with the U. S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) (together, the Services) before proceeding. Following this required consultation, the Services prepare an official "biological opinion" (known as a "jeopardy" or "no jeopardy" biological opinion) addressing whether the agency's proposal will jeopardize the existence of threatened or endangered species. 50 CFR §402.14(h)(1)(iv). Issuance of a "jeopardy" biological opinion here would require the EPA either to implement certain alternatives proposed by the Services, to terminate the action altogether, or to seek an exemption. 16 U. S. C. §§1536(b)(4), (g), 1538(a). After consulting with the Services, the EPA made changes to its proposed rule, and the Services received the revised version in November 2013. Staff members at NMFS and FWS soon completed draft biological opinions concluding that the November 2013 proposed rule was likely to jeopardize certain species. Staff members sent these drafts to the relevant decisionmakers within each agency, but decisionmakers at the Services neither approved the drafts nor sent them to the EPA. The Services instead shelved the draft opinions and agreed with the EPA to extend the period of consultation. After these continued discussions, the EPA sent the Services a revised proposed rule in March 2014 that differed significantly from the 2013 version. Satisfied that the revised rule was unlikely to harm any protected species, the Services issued a joint final "no jeopardy" biological opinion. The EPA issued its final rule that same day.

Respondent Sierra Club, an environmental organization, submitted requests under the Freedom of Information Act (FOIA) for records related to the Services' consultations with the EPA. As relevant here, the Services invoked the deliberative process privilege to prevent disclosure of the draft biological opinions analyzing the EPA's 2013 proposed rule. The Sierra Club sued to obtain these withheld documents,

and the Ninth Circuit held that the draft biological opinions were not privileged because even though labeled as drafts, the draft opinions represented the Services' final opinion regarding the EPA's 2013 proposed rule.

Held: The deliberative process privilege protects from disclosure under FOIA in-house draft biological opinions that are both predecisional and deliberative, even if the drafts reflect the agencies' last views about a proposal. Pp. 267–273.

(a) FOIA mandates the disclosure of documents held by a federal agency unless the documents fall within certain exceptions. 5 U. S. C. § 552(b). One of those exceptions, the deliberative process privilege, shields from disclosure documents reflecting advisory opinions and deliberations comprising the process by which the Government formulates decisions and policies. *NLRB* v. *Sears, Roebuck & Co.*, 421 U. S. 132, 150. The privilege aims to improve agency decisionmaking by encouraging candor and blunting the chilling effect that accompanies the prospect of disclosure. The privilege distinguishes between predecisional, deliberative documents, which are exempt from disclosure, and documents reflecting a final agency decision and the reasons supporting it, which are not. See *Renegotiation Bd.* v. *Grumman Aircraft Engineering Corp.*, 421 U. S. 168, 186. A document does not represent an agency's final decision solely because nothing follows it; sometimes a proposal dies on the vine or languishes. What matters is if the agency treats the document as its final view and concludes the deliberative process by which governmental decisions and policies are formulated, giving the document "real operative effect." See *Sears*, 421 U. S., at 150, 160. Pp. 267–269.

(b) The deliberative process privilege protects the draft biological opinions from disclosure because they reflect a preliminary view—not a final decision—about the EPA's proposed 2013 rule. The administrative context confirms that the draft opinions were subject to change and had no direct legal consequences. Because the decisionmakers neither approved the drafts nor sent them to the EPA, they are best described not as draft biological opinions but as drafts of draft biological opinions. While the drafts may have had the practical effect of provoking EPA to revise its rule, the privilege applies because the Services did not treat the drafts as final. Pp. 269–273.

925 F. 3d 1000, reversed and remanded.

BARRETT, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, ALITO, KAGAN, GORSUCH, and KAVANAUGH, JJ., joined.

BREYER, J., filed a dissenting opinion, in which SOTOMAYOR, J., joined, *post*, p. 273.

Matthew Guarnieri argued the cause for petitioners. With him on the briefs were *Solicitor General Francisco*, *Acting Solicitor General Wall*, *Assistant Attorneys General Hunt* and *Clark*, *Deputy Solicitor General Kneedler*, *Michael R. Huston*, *H. Thomas Byron III*, and *Thomas Pulham*.

Sanjay Narayan argued the cause for respondent. With him on the brief were *Elena Saxonhouse*, *Matthew Miller*, *Scott L. Nelson*, and *Reed Super*.*

JUSTICE BARRETT delivered the opinion of the Court.

The Freedom of Information Act (FOIA) requires that federal agencies make records available to the public upon request, unless those records fall within one of nine exemptions. Exemption 5 incorporates the privileges available to Government agencies in civil litigation, such as the deliberative process privilege, attorney-client privilege, and attorney work-product privilege. This case concerns the deliberative process privilege, which protects from disclosure documents generated during an agency's deliberations about a policy, as opposed to documents that embody or explain a policy that the agency adopts. We must decide whether the privilege protects in-house drafts that proved to be the agencies' last word about a proposal's potential threat to endangered species. We hold that it does.

*Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *David D. Cole*, *Brett Max Kaufman*, *Ashley Gorski*, *Patrick C. Toomey*, *Jennesa Calvo-Friedman*, *Anne L. Weismann*, and *Nikhel S. Sus*; for the American Forest Resource Council et al. by *Lawson E. Fite*, *Ellen Steen*, *Travis Cushman*, *Amy Chai*, *Thomas J. Ward*, and *Karen R. Harned*; for the Center for Biological Diversity et al. by *Eric R. Glitzenstein*, *Jason Rylander*, and *Katherine A. Meyer*; for the Electronic Privacy Information Center by *Alan Butler*; for The Reporters Committee for Freedom of the Press et al. by *Bruce D. Brown*; and for Andrew Rosenberg et al. by *Shaun A. Goho*.

I

A

In April 2011, the Environmental Protection Agency (EPA) proposed a rule on the design and operation of "cooling water intake structures," which withdraw large volumes of water from various sources to cool industrial equipment. EPA's stated goal was to require industrial facilities to use "the best technology available" for "minimizing adverse environmental impact." 76 Fed. Reg. 22174 (2011). But it was unclear whether the proposed rule would achieve that goal, at least when it came to aquatic wildlife. The water withdrawn by these structures typically contains fish and other organisms that can become trapped in the intake system and die. If the EPA's rule did not adequately guard against this risk, it would jeopardize species protected under the Endangered Species Act of 1973, 87 Stat. 884, 16 U. S. C. §1531 *et seq.*

When an agency plans to undertake action that might "adversely affect" a protected species, the agency must consult with the U. S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) (together, "Services") before proceeding. See 16 U. S. C. §1536(a)(2); 50 CFR §§402.01–402.17 (2019).[1] The goal of the consultation is to assist the Services in preparing an official "biological opinion" on whether the agency's proposal will jeopardize the continued existence of threatened or endangered species. §402.14(g)(4). These opinions are known as "'jeopardy'" or "'no jeopardy'" biological opinions. §402.14(h)(1)(iv), as amended, 84 Fed. Reg. 45017 (2019). If the Services conclude that the action will cause "jeopardy," they must propose "reasonable and prudent alternatives" to the action that would avoid harming the threatened species. 16 U. S. C.

[1] The FWS and NMFS administer the statute on behalf of the Secretaries of Interior and Commerce, respectively. See 50 CFR §§17.11, 222.101(a), 402.01(b).

§ 1536(b)(3)(A); 50 CFR § 402.14(h)(2). And if a "jeopardy" biological opinion is issued, the agency must either implement the reasonable and prudent alternatives, terminate the action altogether, or seek an exemption from the Endangered Species Committee. 16 U. S. C. §§ 1536(b)(4), (g), 1538(a).

The EPA began informally consulting with the Services about its proposed regulations on cooling water intake structures in 2012, see 50 CFR § 402.13, and it requested a formal consultation in 2013, see § 402.14. Throughout this period, the Services and the EPA conducted meetings, held conference calls, and exchanged emails and draft documents on the proposed rule and its potential effect on endangered species.

As a result of the consultation, the EPA made changes to its proposed rule, and the Services received the revised version in November 2013. Soon after, the Services tentatively agreed to provide the EPA with draft biological opinions by December 6, 2013, and final opinions by December 20, 2013. See § 402.14(g)(5) (requiring the Services to provide a "draft biological opinion" to action agency upon request).

Staff members at NMFS completed a draft biological opinion on December 6, and staff members at FWS completed a draft on December 9. Both drafts concluded that the proposed rule was likely to jeopardize certain species and identified possible reasonable and prudent alternatives that the EPA could pursue. Staff members sent the drafts to the relevant decisionmakers within each Service and prepared to circulate them to the EPA.

But decisionmakers at the Services neither approved the drafts nor sent them to the EPA. Instead, concluding that "more work needed to be done," the decisionmakers decided to continue discussions with the EPA. App. 37, 58–59. The EPA was still engaged in an internal debate about key elements of the rule, and the Services wanted a better grasp of what the EPA proposed to do. So the Services shelved the draft opinions and agreed with the EPA to extend the period of consultation.

Over the next several months, the Services and the EPA continued to discuss the rule, and in March 2014, the EPA sent the Services a proposed rule that differed significantly from the 2013 version. Satisfied that the revised rule was unlikely to harm any protected species, the Services issued a joint final "no jeopardy" biological opinion, thereby terminating the formal consultation. See 50 CFR § 402.14(m)(1), as amended, 84 Fed. Reg. 45016. The EPA issued its final rule that same day.

B

Sierra Club, an environmental organization, later submitted FOIA requests for records related to the Services' consultations with the EPA. The Services turned over thousands of documents, but they invoked the deliberative process privilege for others—including the draft biological opinions analyzing the EPA's 2013 proposed rule. The deliberative process privilege shields documents that reflect an agency's preliminary thinking about a problem, as opposed to its final decision about it. The Services asserted that as drafts, the withheld documents were necessarily nonfinal and therefore protected.

Sierra Club sued the Services in the Northern District of California, alleging that the withheld documents were subject to disclosure under FOIA. The District Court agreed with Sierra Club, and the Ninth Circuit affirmed in part. 925 F. 3d 1000 (2019). As relevant here, it held that the draft biological opinions were not privileged because even though they were labeled as drafts, they represented the Services' final opinion that the EPA's 2013 proposed rule was likely to have an adverse effect on certain endangered species.[2] Judge Wallace dissented in part on the ground that

[2] The Ninth Circuit also concluded that several other draft documents, including certain documents meant to accompany the draft biological opinions and a March 2014 draft of reasonable and prudent alternatives, were not privileged.

the drafts were part of the ongoing consultation process rather than summaries of the Services' final views.

We granted certiorari. 589 U. S. 1251 (2020).

II

A

FOIA mandates the disclosure of documents held by a federal agency unless the documents fall within one of nine enumerated exemptions. See 5 U. S. C. §552(b). The fifth of those exemptions protects "inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency." §552(b)(5). As the text indicates—albeit in a less-than-straightforward way—this exemption incorporates the privileges available to Government agencies in civil litigation. That list includes the deliberative process privilege, attorney-client privilege, and attorney work-product privilege. See *Department of Interior* v. *Klamath Water Users Protective Assn.*, 532 U. S. 1, 8 (2001).

This case concerns the deliberative process privilege, which is a form of executive privilege. To protect agencies from being "forced to operate in a fishbowl," *EPA* v. *Mink*, 410 U. S. 73, 87 (1973) (internal quotation marks omitted), the deliberative process privilege shields from disclosure "documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated," *NLRB* v. *Sears, Roebuck & Co.*, 421 U. S. 132, 150 (1975) (internal quotation marks omitted). The privilege is rooted in "the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news." *Klamath*, 532 U. S., at 8–9. To encourage candor, which improves agency decisionmaking, the privilege blunts the chilling effect that accompanies the prospect of disclosure.

This rationale does not apply, of course, to documents that embody a final decision, because once a decision has been made, the deliberations are done. The privilege therefore distinguishes between predecisional, deliberative documents, which are exempt from disclosure, and documents reflecting a final agency decision and the reasons supporting it, which are not. See *Renegotiation Bd.* v. *Grumman Aircraft Engineering Corp.*, 421 U. S. 168, 186 (1975). Documents are "predecisional" if they were generated before the agency's final decision on the matter, and they are "deliberative" if they were prepared to help the agency formulate its position. See *Sears*, 421 U. S., at 150–152; *Grumman*, 421 U. S., at 184–186, 190. There is considerable overlap between these two prongs because a document cannot be deliberative unless it is predecisional.

It is not always self-evident whether a document represents an agency's final decision, but one thing is clear: A document is not final solely because nothing else follows it. Sometimes a proposal dies on the vine. *National Security Archive* v. *CIA*, 752 F. 3d 460, 463 (CADC 2014) (Kavanaugh, J.). That happens in deliberations—some ideas are discarded or simply languish. Yet documents discussing such dead-end ideas can hardly be described as reflecting the agency's chosen course. See *Sears*, 421 U. S., at 150–151. What matters, then, is not whether a document is last in line, but whether it communicates a policy on which the agency has settled.

To decide whether a document communicates the agency's settled position, courts must consider whether the agency treats the document as its final view on the matter. See *id.*, at 161. When it does so, the deliberative "process by which governmental decisions and policies are formulated" will have concluded, and the document will have "real operative effect." *Id.*, at 150, 160 (internal quotation marks omitted). In other words, once cited as the agency's final view, the document reflects "the 'consummation' of the agency's deci-

sionmaking process" and not a "merely tentative" position. See *Bennett* v. *Spear*, 520 U. S. 154, 177–178 (1997) (discussing finality in context of obtaining judicial review of agency action). By contrast, a document that leaves agency decisionmakers "free to change their minds" does not reflect the agency's final decision. *Grumman*, 421 U. S., at 189–190, and n. 26.

B

The deliberative process privilege protects the draft biological opinions at issue here because they reflect a preliminary view—not a final decision—about the likely effect of the EPA's proposed rule on endangered species.[3]

We start with the obvious point that the Services identified these documents as "drafts." A draft is, by definition, a preliminary version of a piece of writing subject to feedback and change. That is not to say that the label "draft" is determinative. As we have explained before, a court must evaluate the documents "in the context of the administrative process which generated them." *Sears*, 421 U. S., at 138. Here, though, the administrative context confirms that the drafts are what they sound like: opinions that were subject to change.

Consider the regulatory process that generates a draft biological opinion. The governing regulation distinguishes between draft and final biological opinions by separating the steps at which each is produced. If the Services prepare a biological opinion, they must "make available" to the action agency—in this case, the EPA—a "draft" of that opinion and generally may not issue the final opinion "while the draft is under review" by the action agency. 50 CFR §402.14(g)(5). This provision thus specifically contemplates further review by the agency after receipt of the draft, and with it, the

[3] Like the parties, we focus on the draft biological opinions. But the logic applied to these drafts also applies to the other draft documents.

possibility of changes to the biological opinion *after* the Services send the agency the draft.[4]

Consistent with this understanding, the agreement between the Services and the EPA allowed for the possibility of postcirculation changes. The Services were scheduled to provide the EPA with draft copies of the biological opinions on December 6 and final versions by December 20. If the drafts were to be final and immune from change, there would have been little reason to include a two-week period between the Services' circulation of the drafts and their submission of the final product. The logical inference is that the Services expected the EPA to provide comments that they might incorporate into the final opinion.

Sierra Club contends, though, that while these documents may have been called "drafts," they were actually intended to give the EPA a sneak peek at a conclusion that the Services had already reached and were unwilling to change. And Sierra Club says that the EPA responded accordingly: Once the EPA knew that a jeopardy opinion was coming, it revised its proposed rule. Sierra Club insists that the draft opinions thus had an "operative effect" on the EPA and must be treated as final under our precedent. See *Sears*, 421 U. S., at 160.

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[4] Sierra Club contends that the regulations treat a "jeopardy" finding as final, even though the opinion triggers a discussion of reasonable and prudent alternatives. See 50 CFR §402.14(g)(5) (requiring the Services to make a draft biological opinion available "for the purpose of analyzing the reasonable and prudent alternatives"). As explained below, a critical question is whether the Services treat a draft opinion as final. See *infra*, at 271. So we do not foreclose the possibility that a draft biological opinion is final because, for example, the Services have made clear that they would not incorporate into that opinion responses made by the action agency, as to reasonable and prudent alternatives or other matters. See *infra*, at 271–272. We need not resolve that issue because, as we explain below, the Services' opinions in this case did not count even as drafts under the regulation—they were merely drafts of draft biological opinions.

Sierra Club misunderstands our precedent. While we have identified a decision's "real operative effect" as an indication of its finality, that reference is to the legal, not practical, consequences that flow from an agency's action. *Ibid.* (noting that the relevant memorandum has "real operative effect" because it "permits litigation before the Board"); *id.*, at 159, n. 25 (comparing the "operative effect" of the memorandum to that of a district court order). In this regulatory scheme, a final biological opinion leads to "direct and appreciable legal consequences" because it alters "the legal regime to which the action agency is subject, authorizing it" to take action affecting an endangered species "if (but only if) it complies with the prescribed conditions." *Bennett*, 520 U. S., at 178. That is not true of a draft biological opinion.

To be sure, a draft biological opinion might carry a practical consequence if it prompts the action agency to change its proposed rule. For example, the agency might adopt an alternative approach that avoids jeopardizing an endangered species. But many documents short of a draft biological opinion could prompt an agency to alter its rule. An agency might make changes in response to the Services' views—or, for that matter, the views of the agency's own officials—at any stage of the consultation process. And even Sierra Club does not contend that any email or memorandum that has the effect of changing an agency's course constitutes a final administrative decision. That approach would gut the deliberative process privilege.

Sierra Club's proposed effects-based test is therefore not the right one. To determine whether the privilege applies, we must evaluate not whether the drafts provoked a response from the EPA but whether the Services treated them as final.

They did not. The drafts were prepared by lower-level staff and sent to the Services' decisionmakers for approval. Sierra Club characterizes the drafts as polished documents lacking only an autopen signature. But the determinative

fact is not their level of polish—it is that the decisionmakers at the Services neither approved the drafts nor sent them to the EPA. Instead, the decisionmakers concluded that "more work needed to be done" and extended the time for consultation with the EPA. These documents, then, are best described not as draft biological opinions but as drafts of draft biological opinions. Sierra Club's argument thus fails on its own terms: Even assuming that a draft biological opinion would have expressed the Services' settled conclusion, a draft of a draft is a far cry from an "agency decision already made." *Grumman*, 421 U. S., at 184.

It is true, as Sierra Club emphasizes, that the staff recommendations proved to be the last word within the Services about the 2013 version of the EPA's proposed rule. But that does not change our analysis. The recommendations were not last because they were final; they were last because they died on the vine. See *Sears*, 421 U. S., at 151, n. 18 ("[C]ourts should be wary of interfering" with drafts that "do not ripen into agency decisions"). Further consultation with the Services prompted the EPA to alter key features of its 2013 proposal, so there was never a need for the Services to render a definitive judgment about it. The opinion that came to fruition was the Services' joint "no jeopardy" opinion about the 2014 version of the EPA's proposed rule. The staff recommendations were thus part of a deliberative process that worked as it should have: The Services and the EPA consulted about how the rule would affect aquatic wildlife until the EPA settled on an approach that would not jeopardize any protected species.

Sierra Club warns that ruling against it here would permit the Services to stamp every document "draft," thereby protecting even final agency decisions and creating "'secret [agency] law.'" *Id.*, at 153. It is true that a draft document will typically be predecisional because, as we said earlier, calling something a draft communicates that it is not yet final. But determining whether an agency's position is final

for purposes of the deliberative process privilege is a functional rather than formal inquiry. If the evidence establishes that an agency has hidden a functionally final decision in draft form, the deliberative process privilege will not apply. The Services, however, did not engage in such a charade here.

* * *

The deliberative process privilege protects the draft biological opinions from disclosure because they are both predecisional and deliberative. We reverse the contrary judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.[5]

It is so ordered.

JUSTICE BREYER, with whom JUSTICE SOTOMAYOR joins, dissenting.

Because the word "draft" may here prove misleading, it should help the reader understand my argument if he or she keeps in mind three different but related kinds of documents: "Final Biological Opinions," "Draft Biological Opinions," and "Drafts of Draft Biological Opinions." A Final Biological Opinion, as its name suggests, embodies a final agency decision, for example, a decision by the Services that a proposed Environmental Protection Agency (EPA) action will jeopardize an endangered species. We all agree, I believe, that a Final Biological Opinion is not deliberative and that Exemption 5 of the Freedom of Information Act (FOIA) does not protect it from disclosure. I also agree with the Court about the third kind of document, a Draft of a Draft Biologi-

[5] We agree with the parties that the District Court must determine on remand whether any parts of the documents at issue are segregable. See 5 U. S. C. §552(b) (Agencies must disclose "[a]ny reasonably segregable portion" of a document containing some exempt information); §552(a)(4)(B); *NLRB* v. *Sears Roebuck & Co.*, 421 U. S. 132, 161, n. 27 (1975).

cal Opinion. That kind of document normally is not final. It normally is deliberative. And Exemption 5 normally protects it from disclosure.

But what about the second kind of document, a Draft Biological Opinion? Does it normally set forth a "final" Services view, or is it normally a "deliberative" document? I agree with the Court that whether a document is "final" or "deliberative" primarily depends upon its "function[ ]" within an agency's decision-making process. *Ante*, at 273; see also *NLRB* v. *Sears, Roebuck & Co.*, 421 U. S. 132, 138 (1975) ("[T]he function of the documents" and "the context of the administrative process which generated them" is "[c]rucial" to understanding whether the deliberative process privilege applies). I believe that, in the context before us, the Services' Draft Biological Opinions reflect "final" decisions regarding the "jeopardy" the EPA's then-proposed actions would have caused. Hence, they would normally fall outside, not within, Exemption 5.

Five features of the Draft Biological Opinion lead me to this conclusion. First, literally speaking, a Draft Biological Opinion is a "final" document with respect to its content. That is in fact the key difference between a Draft Biological Opinion and a Draft of a Draft Biological Opinion. If further deliberation about the draft's content is likely, the document is not a Draft Biological Opinion. It is a Draft of a Draft. I recognize that in principle a Service might change its mind about the content of even the most final of Draft Biological Opinions. It might then prepare a new Draft Biological Opinion. But, in principle, a Service could also change its mind about a Final Biological Opinion, withdrawing a Final Biological Opinion already issued and substituting a new one in its place. See, *e. g.*, *Oregon Natural Resources Council* v. *Allen*, 476 F. 3d 1031, 1032 (CA9 2007) (Fish and Wildlife Service "voluntarily reinitiated consultation . . . [and] withdrew its favorable Biological Opinion"); see also 50 CFR § 402.16 (2019) (requiring the Services to

reinitiate consultation in specified circumstances, including when "new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered"). The mere possibility of a future change does not alter the finality, or the final effect, of the original document.

Second, a Final Biological Opinion and a Draft Biological Opinion finding jeopardy serve the same functions within the formal administrative process. Both explain the Services' findings. Both set forth "reasonable and prudent" modifications or alternatives. 16 U. S. C. §1536(b)(3)(A). And both have substantially the same effect on the EPA (the action agency in this case). In response to both documents, the EPA has essentially four options: It can drop the proposed action; it can accept the proposed modifications; it can take the proposed action and potentially expose itself to considerable penalties; or it can seek a Cabinet-level exemption. See *National Assn. of Home Builders* v. *Defenders of Wildlife*, 551 U. S. 644, 652 (2007); see also §§1536(b)(4), (g); 50 CFR §402.15; U. S. Fish and Wildlife Service, Consultations | Frequently Asked Questions (June 10, 2020), https://www.fws.gov/endangered/what-we-do/faq.html. The EPA could also, of course, propose a new course of action embodying modifications not proposed by the Services—possibly generating a new consultation—but that is just as true of a Final Biological Opinion. See *ibid.* (noting that an agency can always choose to alter its proposed action).

A Draft Biological Opinion differs from a Final Biological Opinion in only one way that matters. The Services must make the Draft Biological Opinion available to the EPA before it issues a Final Biological Opinion. 50 CFR §402.14(g)(5). It then continues its consultation with the EPA but *not* with an eye toward changing the Services' environmental analysis or conclusions. Rather, the negotiations are designed to find less damaging alternatives to the original EPA-proposed action. See *ibid.* (allowing the action

agency to request the Draft Biological Opinion "for the purpose of analyzing the reasonable and prudent alternatives"). If the agencies find suitable alternatives, the EPA will then publicly adopt those alternatives, and the process will culminate in a Final Biological Opinion finding no jeopardy.

The function of a Draft Biological Opinion finding jeopardy then is much the same as that of a Final Biological Opinion finding jeopardy. Transmitting the Draft Biological Opinion to the EPA simply allows the EPA to make its choice before a Final Biological Opinion issues. See *ibid.*

Third, agency practice shows that the Draft Biological Opinion, not the Final Biological Opinion, is the document that informs the EPA of the Services' conclusions about jeopardy and alternatives and triggers within the EPA the process of deciding what to do about those conclusions. *Amici* tell us without contradiction that "out of 6,829 formal consultations" between 2008 and 2015, the Fish and Wildlife Service "issued a [Final Biological Opinion finding] jeopardy" "only *twice*." Brief for Center for Biological Diversity et al. as *Amici Curiae* 22–23. If a Final Biological Opinion is discoverable under FOIA, as all seem to agree it is, why would a Draft Biological Opinion, embodying the same Service conclusions (and leaving the EPA with the same four choices), not be?

Fourth, permitting discovery of Draft Biological Opinions under FOIA is unlikely to chill frank discussion within a Service because the Services' staff are already aware that these Drafts may well be made public. And for good reason. When a private party prompts the agency action under review, say, by seeking an EPA permit, regulations require the Service to make the Draft Biological Opinion available to the private applicant, removing the Draft Biological Opinion from Exemption 5's protection. See 50 CFR § 402.14(g)(5) (requiring disclosure of Draft Biological Opinions to private applicants if requested); see also *Department of Interior* v. *Klamath Water Users Protective Assn.*, 532 U. S. 1, 4–5

(2001) (documents exchanged between agency and third party not covered by Exemption 5 because they are no longer inter-agency or intra-agency communications). To hold that Draft Biological Opinions are discoverable when a private party seeks an EPA permit but not when, as here, the EPA seeks to write a generally applicable rule that governs private party conduct seems highly anomalous.

Even where there is no private applicant, the evaluating agencies have a long history of disclosing Draft Biological Opinions to the public. See, *e. g.*, App. 93–98, 102–104 (discussing timing of Draft Biological Opinion disclosure); see also *id.*, at 93–98 (discussing roll-out plan and public talking points for Draft Biological Opinion); Supp. Record in No. 17–16560 (CA9), pp. 164–199 (citing additional examples of public disclosure of Draft Biological Opinions); L. Schiffer, National Oceanic and Atmospheric Admin., Guidelines for Compiling an Agency Administrative Record 10 (Dec. 21, 2012), https://www.gc.noaa.gov/documents/2012/AR_Guidelines_122112-Final.pdf ("Final draft documents with independent legal significance, such as final draft environmental impact statements, . . . will not be flagged for potential listing on the agency's Privilege Log" (emphasis in original)). The EPA too may well release a Service's Draft Biological Opinion. See App. 96 ("EPA [Office of Water] has a track record of putting these drafts on their docket which then show up on regulations.gov"); see also *id.*, at 95 ("I agree that it is likely that EPA will put this draft on their docket").

Fifth, legal consequences flow from the Services' completion of a Draft Biological Opinion. The Services' regulations state that "[i]f requested, the Service shall make available to the Federal agency [*i. e.*, the EPA] the draft biological opinion for the purpose of analyzing the reasonable and prudent alternatives." 50 CFR § 402.14(g)(5). Once the Draft Biological Opinion is under review at the EPA, the Services may not issue a Final Biological Opinion prior to the specified deadline. *Ibid.* Moreover, as explained, Draft Biologi-

cal Opinions, like Final Biological Opinions, limit the EPA's set of available options. Cf. *Bennett* v. *Spear*, 520 U. S. 154, 178 (1997) (holding that a Final Biological Opinion has "legal consequences," even though the action agency is not legally obligated to accept the opinion's recommendations or conclusions, because the opinion "alter[s] the legal regime to which the action agency is subject"). Why, then, would these same consequences (together with the other factors mentioned above) not also place Draft Biological Opinions outside Exemption 5's protection?

In sum, the likely finality of a Draft Biological Opinion, its similarity to a Final Biological Opinion, the similar purposes it serves, the agency's actual practice, the anomaly that would otherwise exist depending upon the presence or absence of a private party, and the presence of at least some regulation-based legal constraints—convince me that a Draft Biological Opinion would not normally enjoy a deliberative privilege from FOIA disclosure.

The question remains whether the particular documents at issue here are Draft Biological Opinions or Drafts of Draft Biological Opinions. As the majority points out, there are reasons to believe some of them may be the latter. See *ante*, at 270, n. 4, 271. The National Marine Fisheries Service's documents contain highlighting and editing marks reflective of a work-in-progress. But the Fish and Wildlife Service documents do not, and the record indicates they may have been complete but for a final signature. See App. 105. Given the fact-intensive nature of this question, I would remand to allow the Court of Appeals to determine just how much work was left to be done. If the court determines that the documents are merely Drafts of Draft Biological Opinions, I agree with the majority that a segregability analysis would be appropriate.

For these reasons, with respect, I dissent.

Syllabus

UZUEGBUNAM ET AL. *v.* PRECZEWSKI ET AL.

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

No. 19–968. Argued January 12, 2021—Decided March 8, 2021

Petitioners are former students of Georgia Gwinnett College who wished to exercise their religion by sharing their faith on campus while enrolled there. In 2016, Chike Uzuegbunam talked with interested students and handed out religious literature on campus grounds. Uzuegbunam stopped after a campus police officer informed him that campus policy prohibited distributing written religious materials outside areas designated for that purpose. A college official later explained to Uzuegbunam that he could speak about his religion or distribute materials only in two designated speech areas on campus, and even then only after securing a permit. But when Uzuegbunam obtained the required permit and tried to speak in a free speech zone, a campus police officer again asked him to stop, this time saying that people had complained about his speech. Campus policy at that time prohibited using the free speech zone to say anything that "disturbs the peace and/or comfort of person(s)." The officer told Uzuegbunam that his speech violated campus policy because it had led to complaints, and the officer threatened Uzuegbunam with disciplinary action if he continued. Uzuegbunam again complied with the order to stop speaking. Another student who shares Uzuegbunam's faith, Joseph Bradford, decided not to speak about religion because of these events. Both Uzuegbunam and Bradford sued certain college officials charged with enforcement of the college's speech policies, arguing that these policies violated the First Amendment. As relevant here, the students sought injunctive relief and nominal damages. The college officials ultimately chose to discontinue the challenged policies rather than to defend them, and they sought dismissal on the ground that the policy change left the students without standing to sue. The parties agreed that the policy change rendered the students' request for injunctive relief moot, but disputed whether the students had standing to maintain the suit based on their remaining claim for nominal damages. The Eleventh Circuit held that while a request for nominal damages can sometimes save a case from mootness, such as where a person pleads but fails to prove an amount of compensatory damages, the students' plea for nominal damages alone could not by itself establish standing.

Syllabus

Held: A request for nominal damages satisfies the redressability element necessary for Article III standing where a plaintiff's claim is based on a completed violation of a legal right. Pp. 285–293.

(a) To establish Article III standing, the Constitution requires a plaintiff to identify an injury in fact that is fairly traceable to the challenged conduct and to seek a remedy likely to redress that injury. *Spokeo, Inc.* v. *Robins*, 578 U. S. 330, 338. The dispute here concerns whether the remedy Uzuegbunam sought—nominal damages—can redress the completed constitutional violation that he alleges occurred when campus officials enforced the speech policies against him. The Court looks to the forms of relief awarded at common law to determine whether nominal damages can redress a past injury. The prevailing rule at common law was that a party whose rights are invaded can always recover nominal damages without furnishing evidence of actual damage. By permitting plaintiffs to pursue nominal damages whenever they suffered a personal legal injury, the common law avoided the oddity of privileging small economic rights over important, but not easily quantifiable, nonpecuniary rights. Pp. 285–289.

(b) The common law did not require a plea for compensatory damages as a prerequisite to an award of nominal damages. Nominal damages are not purely symbolic. They are instead the damages awarded by default until the plaintiff establishes entitlement to some other form of damages. A single dollar often will not provide full redress, but the partial remedy satisfies the redressability requirement. *Church of Scientology of Cal.* v. *United States*, 506 U. S. 9, 13. Respondents' argument that a plea for compensatory damages is necessary to confer jurisdiction also does not square with established principles of standing. And unlike an award of attorney's fees and costs which may be the byproduct of a successful suit, an award of nominal damages constitutes relief on the merits. Pp. 289–292.

(c) A request for redress in the form of nominal damages does not guarantee entry to court. In addition to redressability, the plaintiff must establish the other elements of standing and satisfy all other relevant requirements, such as pleading a cognizable cause of action. Uzuegbunam experienced a completed violation of his constitutional rights when respondents enforced their speech policies against him. Nominal damages can redress Uzuegbunam's injury even if he cannot or chooses not to quantify that harm in economic terms. The Court does not decide whether Bradford can pursue nominal damages and leaves for the District Court to determine whether Bradford has established a past, completed injury. Pp. 292–293.

781 Fed. Appx. 824, reversed and remanded.

Syllabus

THOMAS, J., delivered the opinion of the Court, in which BREYER, ALITO, SOTOMAYOR, KAGAN, GORSUCH, KAVANAUGH, and BARRETT, JJ., joined. KAVANAUGH, J., filed a concurring opinion, *post*, p. 293. ROBERTS, C. J., filed a dissenting opinion, *post*, p. 294.

Kristen K. Waggoner argued the cause for petitioners. With her on the briefs were *John J. Bursch*, *Tyson C. Langhofer*, *David A. Cortman*, *Travis C. Barham*, *Jeremiah J. Galus*, and *Katherine L. Anderson*.

Hashim M. Mooppan argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Acting Solicitor General Wall*, *Assistant Attorney General Dreiband*, *Acting Assistant Attorney General Clark*, *Deputy Assistant Attorney General Maugeri*, *Sopan Joshi*, and *Nicole Frazer Reaves*.

Andrew A. Pinson, Solicitor General of Georgia, argued the cause for respondents. With him on the brief were *Christopher M. Carr*, Attorney General of Georgia, *Ross W. Bergethon*, Deputy Solicitor General, *Drew F. Waldbeser*, Assistant Solicitor General, and *Zack W. Lindsey* and *Miles C. Skedsvold*, Assistant Attorneys General, *Kathleen M. Pacious*, Deputy Attorney General, *Roger Chalmers*, Senior Assistant Attorney General, and *Ellen Cusimano*, Assistant Attorney General.*

*Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union et al. by *Lisa S. Blatt* and *Sarah M. Harris*; for the American Humanist Association by *Monica L. Miller*; for the Becket Fund for Religious Liberty by *Adèle A. Keim*, *Eric C. Rassbach*, and *Joseph C. Davis*; for Child Evangelism Fellowship, Inc., by *Mathew D. Staver*, *Anita L. Staver*, *Horatio G. Mihet*, and *Roger K. Gannam*; for the Christian Legal Society by *Reed N. Smith* and *Kimberlee Wood Colby;* for the Council on American-Islamic Relations by *Lena F. Masri* and *Justin M. Sadowsky*; for the Foundation for Individual Rights in Education et al. by *Kevin F. King*, *Tarek J. Austin*, and *Ilya Shapiro*; for the Frederick Douglass Foundation, Inc., by *Eric D. McArthur*; for the General Conference of Seventh-day Adventists et al. by *Todd R. McFarland* and *Andrew G. Schultz*; for the Institute for Free Speech by *Allen J. Dickerson*, *Zac Morgan*, and *Owen D. Yeates*; for the Islam and Religious Freedom Action Team of the Religious Freedom Institute by *Elbert Lin* and *Erica N.*

JUSTICE THOMAS delivered the opinion of the Court.

At all stages of litigation, a plaintiff must maintain a personal interest in the dispute. The doctrine of standing generally assesses whether that interest exists at the outset, while the doctrine of mootness considers whether it exists throughout the proceedings. To demonstrate standing, the plaintiff must not only establish an injury that is fairly traceable to the challenged conduct but must also seek a remedy that redresses that injury. And if in the course of litigation a court finds that it can no longer provide a plaintiff with any effectual relief, the case generally is moot. This case

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Peterson; for the Jewish Coalition for Religious Liberty by *Daniel P. Kearney, Jr.*; for the Justice and Freedom Fund et al. by *James L. Hirsen* and *Deborah J. Dewart*; for the National Right to Work Legal Defense Foundation, Inc., by *Frank D. Garrison, Raymond J. LaJeunesse, Jr.*, and *Bruce N. Cameron*; for Public Citizen by *Matthew A. Seligman, Allison M. Zieve*, and *Scott L. Nelson*; for The Rutherford Institute by *Michael J. Lockerby* and *John W. Whitehead*; for the United States Conference of Catholic Bishops et al. by *Michael H. McGinley, Lincoln Davis Wilson, Carl Esbeck, Anthony R. Picarello, Jr., Jeffrey Hunter Moon*, and *Michael F. Moses*; and for Young Americans for Liberty, Inc., by *Scott A. Keller*.

Briefs of *amici curiae* urging affirmance were filed for the District of Columbia et al. by *Karl A. Racine*, Attorney General of the District of Columbia, *Loren L. Alikhan*, Solicitor General, *Caroline S. Van Zile*, Principal Deputy Solicitor General, *Carl J. Schifferle*, Deputy Solicitor General, and *Jacqueline R. Bechara*, Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Ashley Moody* of Florida, *Clare E. Connors* of Hawaii, *Kwame Raoul* of Illinois, *Curtis T. Hill, Jr.*, of Indiana, *Keith Ellison* of Minnesota, *Gurbir S. Grewal* of New Jersey, *Hector Balderas* of New Mexico, *Joshua H. Stein* of North Carolina, *Herbert H. Slatery III* of Tennessee, *Sean D. Reyes* of Utah, and *Mark R. Herring* of Virginia; and for the National Conference of State Legislatures et al. by *Patrick M. Kane, Kip D. Nelson*, *Christopher J. McNamara*, and *Lisa Soronen*.

Briefs of *amici curiae* were filed for the CatholicVote.org Education Fund by *Scott W. Gaylord*; for the Foundation for Moral Law by *Matthew J. Clark* and *John A. Eidsmoe*; and for the Pacific Legal Foundation et al. by *Deborah J. La Fetra*.

asks whether an award of nominal damages by itself can redress a past injury. We hold that it can.

I

According to the complaint, Chike Uzuegbunam is an evangelical Christian who believes that an important part of exercising his religion includes sharing his faith. In 2016, Uzuegbunam decided to share his faith at Georgia Gwinnett College, a public college where he was enrolled as a student. At an outdoor plaza on campus near the library where students often gather, Uzuegbunam engaged in conversations with interested students and handed out religious literature.

A campus police officer soon informed Uzuegbunam that campus policy prohibited distributing written religious materials in that area and told him to stop. Uzuegbunam complied with the officer's order. To learn more about this policy, he then visited the college's Director of the Office of Student Integrity, who was directly responsible for promulgating and enforcing the policy. When asked if Uzuegbunam could continue speaking about his religion if he stopped distributing materials, the official said no. The official explained that Uzuegbunam could speak about his religion or distribute materials only in two designated "free speech expression areas," which together make up just 0.0015 percent of campus. And he could do so only after securing the necessary permit. Uzuegbunam then applied for and received a permit to use the free speech zone.

Twenty minutes after Uzuegbunam began speaking on the day allowed by his permit, another campus police officer again told him to stop, this time saying that people had complained about his speech. Campus policy prohibited using the free speech zone to say anything that "disturbs the peace and/or comfort of person(s)." App. to Pet. for Cert. 151(a). The officer told Uzuegbunam that his speech violated this policy because it had led to complaints. The officer threat-

ened Uzuegbunam with disciplinary action if he continued. Uzuegbunam again complied with the order to stop speaking. Another student who shares Uzuegbunam's faith, Joseph Bradford, decided not to speak about religion because of these events.

Both students sued a number of college officials in charge of enforcing the college's speech policies, arguing that those policies violated the First Amendment. As relevant here, they sought nominal damages and injunctive relief. Respondents initially attempted to defend the policy, stating that Uzuegbunam's discussion of his religion "arguably rose to the level of 'fighting words.'" *Id.*, at 155(a). But the college officials quickly abandoned that strategy and instead decided to get rid of the challenged policies. They then moved to dismiss, arguing that the suit was moot, because of the policy change. The students agreed that injunctive relief was no longer available, but they disagreed that the case was moot. They contended that their case was still live because they had also sought nominal damages. The District Court dismissed the case, holding that the students' claim for nominal damages was insufficient by itself to establish standing.

The Eleventh Circuit affirmed. 781 Fed. Appx. 824 (2019). It stated that a request for nominal damages can save a case from mootness in certain circumstances, such as where a person pleads but fails to prove an amount of compensatory damages. But, because the students did not request compensatory damages, their plea for nominal damages could not by itself establish standing.

We granted certiorari to consider whether a plaintiff who sues over a completed injury and establishes the first two elements of standing (injury and traceability) can establish the third by requesting only nominal damages. 591 U. S. 1028 (2020). We now reverse.

II

To satisfy the "'irreducible constitutional minimum'" of Article III standing, a plaintiff must not only establish (1) an injury in fact (2) that is fairly traceable to the challenged conduct, but he must also seek (3) a remedy that is likely to redress that injury. *Spokeo, Inc.* v. *Robins*, 578 U. S. 330, 338 (2016); see also *Gill* v. *Whitford*, 585 U. S. 48, 65 (2018). There is no dispute that Uzuegbunam has established the first two elements. The only question is whether the remedy he sought—nominal damages—can redress the constitutional violation that Uzuegbunam alleges occurred when campus officials enforced the speech policies against him.

A

In determining whether nominal damages can redress a past injury, we look to the forms of relief awarded at common law. "Article III's restriction of the judicial power to 'Cases' and 'Controversies' is properly understood to mean 'cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process.'" *Vermont Agency of Natural Resources* v. *United States ex rel. Stevens*, 529 U. S. 765, 774 (2000) (quoting *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 102 (1998)); cf. *Memphis Community School Dist.* v. *Stachura*, 477 U. S. 299, 306 (1986) (relief for "§ 1983 plaintiffs . . . is ordinarily determined according to principles derived from the common law of torts"). The parties here agree that courts at common law routinely awarded nominal damages. They, instead, dispute what kinds of harms those damages could redress.

Both sides agree that nominal damages historically could provide prospective relief. The award of nominal damages was one way for plaintiffs at common law to "obtain a form of declaratory relief in a legal system with no general declaratory judgment act." D. Laycock & R. Hasen, Modern

American Remedies 636 (5th ed. 2019). For example, a trespass to land or water rights might raise a prospective threat to a property right by creating the foundation for a future claim of adverse possession or prescriptive easement. *Blanchard* v. *Baker*, 8 Me. 253, 268 (1832) ("If an unlawful diversion [of water] is suffered for twenty years, it ripens into a right, which cannot be controverted"). By obtaining a declaration of trespass, a property owner could "vindicate his right by action" and protect against those future threats. *Ibid.* Courts at common law would not declare property boundaries in the abstract, "but the suit for nominal damages allowed them to do so indirectly." Laycock, *supra*, at 636.

The parties disagree, however, about whether nominal damages alone could provide retrospective relief. Stressing the declaratory function, respondents argue that nominal damages by themselves redressed only continuing or threatened injury, not past injury.

But cases at common law paint a different picture. Early courts required the plaintiff to prove actual monetary damages in every case: "[I]njuria & damnum [injury and damage] are the two grounds for the having [of] all actions, and without these, no action lieth." *Cable* v. *Rogers*, 3 Bulst. 311, 312, 81 Eng. Rep. 259 (K. B. 1625). Later courts, however, reasoned that *every* legal injury necessarily causes damage, so they awarded nominal damages absent evidence of other damages (such as compensatory, statutory, or punitive damages), and they did so where there was no apparent continuing or threatened injury for nominal damages to redress. See, *e. g.*, *Barker* v. *Green*, 2 Bing. 317, 130 Eng. Rep. 327 (C. P. 1824) (nominal damages awarded for 1-day delay in arrest because "if there was a breach of duty the law would presume some damage"); *Hatch* v. *Lewis*, 2 F. & F. 467, 479, 485–486, 175 Eng. Rep. 1145, 1150, 1153 (N. P. 1861) (ineffective assistance by criminal defense attorney that does not prejudice the client); *Dods* v. *Evans*, 15 C. B. N. S. 621, 624, 627, 143 Eng. Rep. 929, 930–931 (C. P. 1864) (breach of con-

tract); *Marzetti* v. *Williams*, 1 B. & Ad. 415, 417–418, 423–428, 109 Eng. Rep. 842, 843, 845–847 (K. B. 1830) (bank's 1-day delay in paying on a check); *id.*, at 424, 109 Eng. Rep., at 845 (recognizing that breach of contract could create a continuing injury but determining that the fact of breach of contract by itself justified nominal damages).

The latter approach was followed both before and after ratification of the Constitution. An early case about voting rights effectively illustrates this common-law understanding. Faced with a suit pleading denial of the right to vote, the court rejected the plaintiff's claim because, among other reasons, the plaintiff had not established actual damages. *Ashby* v. *White*, 2 Raym. Ld. 938, 941–943, 948, 92 Eng. Rep. 126, 129, 130, 133 (K. B. 1703). Dissenting, Lord Holt argued that the common law inferred damages whenever a legal right was violated. Observing that the law recognized "not merely pecuniary" injury but also "personal injury," Lord Holt stated that "every injury imports a damage" and that a plaintiff could always obtain damages even if he "does not lose a penny by reason of the [violation]." *Id.*, at 955, 92 Eng. Rep., at 137. Although Lord Holt was in the minority, the House of Lords overturned the majority decision, thus validating Lord Holt's position, 3 Salk. 17, 91 Eng. Rep. 665 (K. B. 1703), and this principle "laid down . . . by Lord Holt" was followed "in many subsequent cases," *Embrey* v. *Owen*, 6 Exch. 353, 368, 155 Eng. Rep. 579, 585 (1851).

The dissent correctly notes that English courts differed in some respects from courts under our system, but Lord Holt's position also prevailed in courts on this side of the Atlantic. Applying what he called Lord Holt's "incontrovertible" reasoning, Justice Story explained that a prevailing plaintiff "is entitled to a verdict for nominal damages" whenever "no other [kind of damages] be proved." *Webb* v. *Portland Mfg. Co.*, 29 F. Cas. 506, 508–509 (No. 17,322) (CC Me. 1838). Because the common law recognized that "every violation imports damage," Justice Story reasoned that "[t]he law toler-

ates no farther inquiry than whether there has been the violation of a right." *Ibid.* Justice Story also made clear that this logic applied to both retrospective and prospective relief. *Id.*, at 507 (stating that nominal damages are available "wherever there is a wrong" and that, "[a] fortiori, this doctrine applies where there is not only a violation of a right of the plaintiff, but the act of the defendant, if continued, may become the foundation, by lapse of time, of an adverse right").

The dissent discounts Justice Story's statement, saying that he took a potentially contradictory position elsewhere and asserted that both actual damages and a violation of a legal right are required. *Post,* at 300 (opinion of ROBERTS, C. J.). But in the same source the dissent cites, Justice Story said that nominal damages are "presumed" "[w]here the breach of duty is clear." Commentaries on the Law of Agency § 217, p. 211 (1839). Justice Story adopted the same position a few years later. *Whipple* v. *Cumberland Mfg. Co.*, 29 F. Cas. 934, 936 (No. 17,516) (CC Me. 1843) (stating that it is "well-known and well-settled" that "wherever a wrong is done to a right," at minimum "nominal damages will be given"). And other jurists declared that "[t]he principle that every injury legally imports damage, was decisively settled, in the case of *Ashby*." *Parker* v. *Griswold*, 17 Conn. *288, *304–*306 (1845) (citing many cases on both sides of the Atlantic, including *Webb* and *Marzetti*). This history is hardly one of "indeterminate sources." *Post,* at 301.

Admittedly, the rule allowing nominal damages for a violation of any legal right, though "decisively settled," *Parker*, 17 Conn., at *304, was not universally followed—as is true for most common-law doctrines. And some courts only followed the rule in part, recognizing the availability of nominal damages but holding that the improper denial of nominal damages could be harmless error. Yet, even among these courts, many adopted the rule in full whenever a person proved that there was a violation of an "important right."

E. g., *Hecht* v. *Harrison*, 5 Wyo. 279, 290, 40 P. 306, 309–310 (1895); accord, *Reid* v. *Johnson*, 132 Ind. 416, 419, 31 N. E. 1107, 1108 (1892) ("substantial right"). Nonetheless, the prevailing rule, "well established" at common law, was "that a party whose rights are invaded can always recover nominal damages without furnishing any evidence of actual damage." 1 T. Sedgwick, Measure of Damages 71, n. a (7th ed. 1880); see also *id.*, at 72 (citing Lord Holt's opinion in *Ashby*).

That this rule developed at common law is unsurprising in the light of the noneconomic rights that individuals had at that time. A contrary rule would have meant, in many cases, that there was no remedy at all for those rights, such as due process or voting rights, that were not readily reducible to monetary valuation. See D. Dobbs & C. Roberts, Law of Remedies § 3.3(2) (3d ed. 2018) (nominal damages are often awarded for a right "not economic in character and for which no substantial non-pecuniary award is available"); see also *Carey* v. *Piphus*, 435 U. S. 247, 266–267 (1978) (awarding nominal damages for a violation of procedural due process). By permitting plaintiffs to pursue nominal damages whenever they suffered a personal legal injury, the common law avoided the oddity of privileging small-dollar economic rights over important, but not easily quantifiable, nonpecuniary rights.

B

Respondents and the dissent attempt to discount this historical line of cases by contending that something other than nominal damages provided redressability. They argue instead that courts could award nominal damages only when a plaintiff pleaded compensatory damages but failed to prove a specific amount. In those circumstances, they say, the plea for compensatory damages is what satisfied the redressability requirement, and courts awarded nominal damages merely as a technical matter. We do not agree.

To begin with, the cases themselves did not require a plea for compensatory damages as a condition for receiving

nominal damages. Lord Holt spoke in categorical terms: "[E]very injury imports a damage," so a plaintiff who proved a legal violation could always obtain some form of damages because he "must of necessity have a means to vindicate and maintain [the right]." *Ashby*, 2 Raym. Ld., at 953–955, 92 Eng. Rep., at 136–137. Justice Story's language was no less definitive: "The law tolerates no farther inquiry than whether there has been the violation of a right." *Webb*, 29 F. Cas., at 508. When a right is violated, that violation "imports damage in the nature of it" and "the party injured is entitled to a verdict for nominal damages." *Id.*, at 507.

Respondents and the dissent thus get the relationship between nominal damages and compensatory damages backwards. Nominal damages are not a consolation prize for the plaintiff who pleads, but fails to prove, compensatory damages. They are instead the damages awarded by default until the plaintiff establishes entitlement to some other form of damages, such as compensatory or statutory damages. See, *e. g.*, *Dods*, 15 C. B. N. S., at 621, 627, 143 Eng. Rep., at 929, 931 (prevailing plaintiff entitled to nominal damages as a matter of law even where jury neglected to find them); see also *Stachura*, 477 U. S., at 308 (rejecting the argument that courts could presume, without proof, damages greater than nominal).

The argument that a claim for compensatory damages is a prerequisite for an award of nominal damages also rests on the flawed premise that nominal damages are purely symbolic, a mere judicial token that provides no actual benefit to the plaintiff. That contention is not without some support. See, *e. g.*, *Stanton* v. *New York & Eastern R. Co.*, 59 Conn. 272, 282, 22 A. 300, 303 (1890) ("Nominal damages mean no damages at all. They exist only in name and not in amount"); but cf. *ibid.* (still recognizing that nominal damages are appropriate when a right is violated). But this view is against the weight of the history discussed above, and we have already expressly rejected it. Despite being

small, nominal damages are certainly concrete. The dissent says that "an award of nominal damages does not change [a plaintiff's] status or condition at all." *Post*, at 296. But we have already held that a person who is awarded nominal damages receives "relief on the merits of his claim" and "may demand payment for nominal damages no less than he may demand payment for millions of dollars in compensatory damages." *Farrar* v. *Hobby*, 506 U. S. 103, 111, 113 (1992). Because nominal damages are in fact damages paid to the plaintiff, they "affec[t] the behavior of the defendant towards the plaintiff" and thus independently provide redress. *Hewitt* v. *Helms*, 482 U. S. 755, 761 (1987) (emphasis deleted); accord, *Mission Product Holdings, Inc.* v. *Tempnology, LLC*, 587 U. S. 370, 377 (2019) ("If there is any chance of money changing hands, [the] suit remains live"). True, a single dollar often cannot provide full redress, but the ability "to effectuate a partial remedy" satisfies the redressability requirement. *Church of Scientology of Cal.* v. *United States*, 506 U. S. 9, 13 (1992).

The next difficulty faced by respondents and the dissent is their inability to square their argument with established principles of standing. Because redressability is an "'irreducible'" component of standing, *Spokeo*, 578 U. S., at 338, no federal court has jurisdiction to enter a judgment unless it provides a remedy that can redress the plaintiff's injury. Yet early courts routinely awarded nominal damages alone. Certainly, no one seems to think that those judgments were without legal effect. Those nominal damages necessarily must have provided redress. Respondents contend that a request for compensatory damages at the pleading stage was what provided the basis for nominal damages at the judgment stage. But a plaintiff must maintain a personal interest in the dispute at every stage of litigation, including when judgment is entered, *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 561 (1992), and must do so "separately for each form of relief sought," *Friends of the Earth, Inc.* v. *Laidlaw*

Environmental Services (TOC), Inc., 528 U. S. 167, 185 (2000). As soon as a plea for compensatory damages fails at the factfinding stage of litigation, that plea can no longer support jurisdiction for a favorable judgment. The dissent's contrary assertion is unaccompanied by any citation.

Likewise, any analogy to attorney's fees and costs fails. A request for attorney's fees or costs cannot establish standing because those awards are merely a "byproduct" of a suit that already succeeded, not a form of redressability. *Steel Co.*, 523 U. S., at 107; see also *Lewis* v. *Continental Bank Corp.*, 494 U. S. 472, 480 (1990). In contrast, nominal damages are redress, not a byproduct.

III

Because nominal damages were available at common law in analogous circumstances, we conclude that a request for nominal damages satisfies the redressability element of standing where a plaintiff's claim is based on a completed violation of a legal right.

The dissent worries that after today the Judiciary will be required to weigh in on legal questions "whenever a plaintiff asks for a dollar." *Post*, at 302. But petitioners still would have satisfied redressability if instead of one dollar in nominal damages they sought one dollar in compensation for a wasted bus fare to travel to the free speech zone. The dissent "would place a higher value on Article III" than a dollar. *Post*, at 294; but see *Sprint Communications Co.* v. *APCC Services, Inc.*, 554 U. S. 269, 305 (2008) (ROBERTS, C. J., dissenting) ("Article III is worth a dollar"). But Congress abolished the statutory amount-in-controversy requirement for federal-question jurisdiction in 1980. Federal Question Jurisdictional Amendments Act, 94 Stat. 2369. And we have never held that one applies as a matter of constitutional law.

This is not to say that a request for nominal damages guarantees entry to court. Our holding concerns only redress-

ability. It remains for the plaintiff to establish the other elements of standing (such as a particularized injury); plead a cognizable cause of action, *Planck* v. *Anderson*, 5 T. R. 37, 40, 101 Eng. Rep. 21, 23 (K. B. 1792) ("if no [actual] damage be sustained, the creditor has no cause of action" for some claims); and meet all other relevant requirements. We hold only that, for the purpose of Article III standing, nominal damages provide the necessary redress for a completed violation of a legal right.

Applying this principle here is straightforward. For purposes of this appeal, it is undisputed that Uzuegbunam experienced a completed violation of his constitutional rights when respondents enforced their speech policies against him. Because "every violation [of a right] imports damage," *Webb*, 29 F. Cas., at 509, nominal damages can redress Uzuegbunam's injury even if he cannot or chooses not to quantify that harm in economic terms.*

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE KAVANAUGH, concurring.

I agree with the Court that, as a matter of history and precedent, a plaintiff's request for nominal damages can satisfy the redressability requirement for Article III standing and can keep an otherwise moot case alive. I write separately simply to note that I agree with THE CHIEF JUSTICE and the Solicitor General that a defendant should be able to accept the entry of a judgment for nominal damages against it and thereby end the litigation without a resolution of the

*We do not decide whether Bradford can pursue nominal damages. Nominal damages go only to redressability and are unavailable where a plaintiff has failed to establish a past, completed injury. The District Court should determine in the first instance whether the enforcement against Uzuegbunam also violated Bradford's constitutional rights.

merits. *Post*, at 303 (ROBERTS, C. J., dissenting); Brief for United States as *Amicus Curiae* 29–30.

CHIEF JUSTICE ROBERTS, dissenting.

Petitioners Chike Uzuegbunam and Joseph Bradford want to challenge the constitutionality of speech restrictions at Georgia Gwinnett College. There are just a few problems: Uzuegbunam and Bradford are no longer students at the college. The challenged restrictions no longer exist. And the petitioners have not alleged actual damages. The case is therefore moot because a federal court cannot grant Uzuegbunam and Bradford "any effectual relief whatever." *Chafin* v. *Chafin*, 568 U. S. 165, 172 (2013) (internal quotation marks omitted).

The Court resists this conclusion, holding that the petitioners can keep pressing their claims because they have asked for "nominal damages." In the Court's view, nominal damages can save a case from mootness because any amount of money—no matter how trivial—"can redress a past injury." *Ante*, at 283. But an award of nominal damages does not alleviate the harms suffered by a plaintiff, and is not intended to. If nominal damages can preserve a live controversy, then federal courts will be required to give advisory opinions whenever a plaintiff tacks on a request for a dollar. Because I would place a higher value on Article III, I respectfully dissent.

I

In urging the ratification of the Constitution, Alexander Hamilton famously wrote that "the judiciary, from the nature of its functions, will always be the least dangerous" of "the different departments of power." The Federalist No. 78, p. 465 (C. Rossiter ed. 1961). This was so, Hamilton explained, because the Judiciary "will be least in a capacity to annoy or injure" "the political rights of the Constitution." *Ibid.* Whereas "[t]he executive not only dispenses the honors but holds the sword of the community," and "[t]he legisla-

ture not only commands the purse but prescribes the rules by which the duties and rights of every citizen are to be regulated," the Judiciary "may truly be said to have neither FORCE nor WILL but merely judgment." *Ibid.*

But that power of judgment can nonetheless bind the Executive and Legislature—and the States. It is modest only if confined to its proper sphere. As John Marshall emphasized during his one term in the House of Representatives, "[i]f the judicial power extended to every *question* under the constitution" or "to every *question* under the laws and treaties of the United States," then "[t]he division of power [among the branches of Government] could exist no longer, and the other departments would be swallowed up by the judiciary." 4 Papers of John Marshall 95 (C. Cullen ed. 1984) (quoted in *DaimlerChrysler Corp.* v. *Cuno*, 547 U. S. 332, 341 (2006)). To maintain adequate separation between the Judiciary, on the one hand, and the political branches and the States, on the other, Article III of the Constitution authorizes federal courts to decide only "Cases" and "Controversies"—that is, "cases of a Judiciary nature." 2 Records of the Federal Convention of 1787, p. 430 (M. Farrand ed. 1966) (J. Madison).

The case-or-controversy requirement imposes fundamental restrictions on who can invoke federal jurisdiction and what types of disputes federal courts can resolve. As pertinent here, "when it is impossible for a court to grant any effectual relief whatever to the prevailing party," *Chafin*, 568 U. S., at 172 (internal quotation marks omitted), the case is moot, and the court has no power to decide it, see *Spencer* v. *Kemna*, 523 U. S. 1, 18 (1998). To decide a moot case would be to give an advisory opinion, in violation of "the oldest and most consistent thread in the federal law of justiciability." *Flast* v. *Cohen*, 392 U. S. 83, 96 (1968) (internal quotation marks omitted).

By insisting that judges be able to provide meaningful redress to litigants, Article III ensures that federal courts ex-

ercise their authority only "as a necessity in the determination of real, earnest and vital controversy between individuals." *Chicago & Grand Trunk R. Co.* v. *Wellman*, 143 U. S. 339, 345 (1892); see *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.*, 454 U. S. 464, 471 (1982) ("The constitutional power of federal courts cannot be defined, and indeed has no substance, without reference to the necessity 'to adjudge the legal rights of litigants in actual controversies.'" (quoting *Liverpool, New York & Philadelphia S. S. Co.* v. *Commissioners of Emigration*, 113 U. S. 33, 39 (1885))). When plaintiffs like Uzuegbunam and Bradford allege neither actual damages nor the prospect of future injury, an award of nominal damages does not change their status or condition at all. Such an award instead represents a judicial determination that the plaintiffs' interpretation of the law is correct—nothing more. The court in such a case is acting not as an Article III court, but as a moot court, deciding cases "in the rarified atmosphere of a debating society." *Director, Office of Workers' Compensation Programs* v. *Perini North River Associates*, 459 U. S. 297, 305 (1983) (internal quotation marks omitted).

II

The Court sees no problem with turning judges into advice columnists. In its view, the common law and (to a lesser extent) our cases require that federal courts open their doors to any plaintiff who asks for a dollar. I part ways with the Court regarding both the framework it applies and the result it reaches.

Begin with the framework. The Court's initial premise is that we must "look to the forms of relief awarded at common law" in order to decide "whether nominal damages can redress a past injury." *Ante*, at 285. Because the Court finds that "nominal damages were available at common law in analogous circumstances" to the ones before us, it "conclude[s] that a request for nominal damages satisfies the redress-

ability element of standing where a plaintiff's claim is based on a completed violation of a legal right." *Ante*, at 292.

Any lessons that we learn from the common law, however, must be tempered by differences in constitutional design. The structure and function of 18th-century English courts were in many respects irreconcilable with "the role assigned to the judiciary in a tripartite allocation of power." *Flast*, 392 U. S., at 95. Perhaps most saliently, in England "all jurisdictions of courts [were] either mediately or immediately derived from the crown," 1 W. Blackstone, Commentaries on the Laws of England 257 (1765), an organizational principle the Framers explicitly rejected by separating the Executive from the Judiciary. This difference in organization yielded a difference in operation. To give just one example, "English judicial practice with which early Americans were familiar had long permitted the Crown to solicit advisory opinions from judges." R. Fallon, J. Manning, D. Meltzer, & D. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 52 (7th ed. 2015). We would not look to such practice for guidance today if a plaintiff came into court arguing that advisory opinions were in fact an appropriate form of Article III redress. We would know that they are not. We likewise should know that a bare request for nominal damages is not justiciable because the plaintiff cannot "benefit in a tangible way from the court's intervention." *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 103, n. 5 (1998) (internal quotation marks omitted).

We should of course consult founding-era decisions when discerning the boundaries of our jurisdiction, for the Framers sought to limit the judicial power to "Cases" and "Controversies," as those terms were understood at the time. See *Coleman* v. *Miller*, 307 U. S. 433, 460 (1939) (opinion of Frankfurter, J.). No question. But that does not mean that the requirements of Article III are "satisfied merely because a party requests a court of the United States to declare its legal rights, and has couched that request for forms of relief

historically associated with courts of law in terms that have a familiar ring to those trained in the legal process." *Valley Forge*, 454 U. S., at 471. A focus on common law analogues cannot obscure the significance of the establishment of an independent Judiciary—a "remarkable transformation" from a system with courts operating as "appendages of crown power." Gordon S. Wood, The Origins of Judicial Review, 22 Suffolk U. L. Rev. 1293, 1304 (1988). That transformation carries with it the need to cabin the jurisdiction of the Judiciary to ensure it does not trespass on the province of the political branches.

It is in any event entirely unclear whether common law courts would have awarded nominal damages in a case like the one before us. There is no dispute that "nominal damages historically could provide *prospective* relief," because such awards allowed "plaintiffs at common law to 'obtain a form of declaratory relief in a legal system with no general declaratory judgment act.'" *Ante*, at 285 (quoting D. Laycock & R. Hasen, Modern American Remedies 636 (5th ed. 2019); emphasis added); see Borchard, The Declaratory Judgment—A Needed Procedural Reform, 28 Yale L. J. 1, 25–29 (1918) (describing the development of declaratory judgments in England in the second half of the 19th century). Yet the petitioners in this case no longer seek prospective relief. Although they initially asked for a declaratory judgment and a preliminary injunction, they abandoned those requests once the college rescinded the challenged policies.

The Court is correct to note that plaintiffs at common law often received nominal damages for past violations of their rights. Those awards, however, were generally limited to situations in which prevailing plaintiffs tried and failed to prove actual damages. See 1 D. Dobbs, Law of Remedies §3.3(2), p. 296 (2d ed. 1993) (describing nominal damages awards as "a rescue operation"). Notwithstanding the Court's protestations to the contrary, nominal damages in such cases were in fact a "consolation prize," *ante*, at 290,

awarded as a hook to allow prevailing plaintiffs to at least recover attorney's fees and costs. See W. Hale, Handbook on the Law of Damages 30–31 (1896) ("The importance of the right to recover nominal damages often consists in its effect on costs."); 1 T. Sedgwick, Measure of Damages § 96, p. 164 (9th ed. 1912) ("[T]hey are a mere peg to hang costs on." (internal quotation marks omitted)). The petitioners in this case have asked to recover their fees and costs, but they never sought actual damages, so the common law provides little relevant support.

On this last point, the Court acknowledges in several places that the historical record is mixed as to whether legal violations were actionable *at all* without a showing of compensable harm. See *ante*, at 286–287, 288–289. And the Court does not cite any case in which plaintiffs sought only nominal damages for purely retrospective injuries. The Court instead relies on several decisions that contained live damages claims, see *Barker* v. *Green*, 2 Bing. 317, 130 Eng. Rep. 327 (C. P. 1824) ("actual damage was the gist of the action"); *Hatch* v. *Lewis*, 2 F. & F. 467, 469, 175 Eng. Rep. 1145, 1146 (N. P. 1861) (defendants' ineffective assistance allegedly caused plaintiff to be "deprived of the profits and emoluments he might otherwise have obtained"); *Dods* v. *Evans*, 15 C. B. N. S. 621, 143 Eng. Rep. 929 (C. P. 1864) (action for damages), or involved prospective harm to the plaintiff's reputation, see *Marzetti* v. *Williams*, 1 B. & Ad. 415, 420, 109 Eng. Rep. 842, 844 (K. B. 1830) (bank's failure to timely pay "was injurious to the character of the plaintiff in his trade"); see also C. Addison, Law of Torts 46–47 (1860) (defamation actionable without proof of damage).

The Court also appeals to "categorical" and "definitive" statements by Lord Chief Justice Holt and Justice Story, that "every injury imports a damage," *Ashby* v. *White*, 2 Raym. Ld. 938, 955, 92 Eng. Rep. 126, 137 (K. B. 1703), and that "[t]he law tolerates no farther inquiry than whether there has been the violation of a right," *Webb* v. *Portland Mfg. Co.*,

29 F. Cas. 506, 508 (No. 17,322) (CC Me. 1838). *Ante*, at 290. These statements, however, bear less weight than the Court suggests. Lord Holt was alone in dissent in *Ashby* (no shame there), and although his opinion has been cited favorably by subsequent cases and commentary, his colleagues disagreed with him. The Court writes that "the House of Lords overturned the majority decision, thus validating Lord Holt's position," *ante*, at 287, but the House of Lords likely paid scant attention to Lord Holt's analysis. It appears instead that the majority decision was reversed as collateral damage in a Whig-Tory political dispute, and "little weight was given to reasoning or eloquence." 2 J. Campbell, Lives of the Chief Justices of England 160 (1849). (Ashby had tried to vote for a Whig candidate, and his ballot had been rejected as part of a Tory election-rigging scheme. *Id.*, at 156–157.) Regardless, the House of Lords held that Ashby "should recover his damages assessed by the jury" at trial, suggesting that the fact of injury alone did not "import" them. *Ashby* v. *White*, 1 Bro. P. C. 62, 64, 1 Eng. Rep. 417, 418 (1703).

Justice Story is no more helpful to the Court—despite the supposedly "definitive" nature of his statement in *Webb*—as he took the position elsewhere in his writings that a legal violation alone was *not* sufficient to ground a lawsuit. See Commentaries on the Law of Agency § 236, p. 200 (1839) ("[T]he rule applies, that though it is a wrong, it is without any damage; and, to maintain an action, both must concur; for *damnum absque injuria*, and *injuria absque damno*, are equally objections to any recovery."). Perhaps Justice Story's conflicting statements can be reconciled, see *ante*, at 288; Hessick, Standing, Injury in Fact, and Private Rights, 93 Cornell L. Rev. 275, 283, n. 38 (2008), but neither his commentary nor Lord Holt's dissent provides firm footing for the position that a plaintiff could seek nominal damages without alleging actual damages or prospective harm.

At bottom, the Court relies on a handful of indeterminate sources to justify a radical expansion of the judicial power. The Court acknowledges that "the rule allowing nominal damages for a violation of any legal right . . . was not universally followed," *ante*, at 288, but even this concession understates the equivocal nature of the historical record. I would require more before bursting the bounds of Article III.

The Court spends little time trying to reconcile its analysis with modern justiciability principles. It cites in passing our decisions in *Carey* v. *Piphus*, 435 U. S. 247 (1978), *Memphis Community School Dist.* v. *Stachura*, 477 U. S. 299 (1986), and *Farrar* v. *Hobby*, 506 U. S. 103 (1992), but those cases made no mention of Article III, and none involved a standalone claim for nominal damages. The Court also contends that nominal damages must provide redress because courts would otherwise lack jurisdiction to award them, even where a plaintiff tries and fails to prove actual damages. See *ante*, at 291. But a claim for actual damages preserves a live controversy, see *Memphis Light, Gas & Water Div.* v. *Craft*, 436 U. S. 1, 8–9 (1978), and a court does not lose jurisdiction just because that claim ultimately fails.

Finally, the Court argues that nominal damages provide Article III relief because they "affec[t] the behavior of the defendant towards the plaintiff" by requiring "money changing hands." *Ante*, at 291 (internal quotation marks omitted). If this were the standard, then the prospect of attorney's fees and costs would confer standing at the beginning of a lawsuit and prevent mootness throughout—a proposition we have squarely rejected. See *Lewis* v. *Continental Bank Corp.*, 494 U. S. 472, 480 (1990). The Court posits that "nominal damages are redress," whereas fees and costs "are merely a byproduct of a suit that already succeeded." *Ante*, at 292 (internal quotation marks omitted). This classification just begs the question of what qualifies as redress. To satisfy Article III, redress must alleviate the plaintiff's alleged

injury in some way, either by compensating the plaintiff for a past loss or by preventing an ongoing or future harm. Nominal damages do not serve these ends where a plaintiff alleges only a completed violation of his rights. They are not intended to approximate the value of tangible or intangible harms, or the deterrent effect required to prevent future misconduct. And they are not calculated with reference to either of these purposes. Because such an award performs no remedial function—and because "[r]elief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court," *Steel Co.*, 523 U. S., at 107—nominal damages cannot preserve a live controversy where a case is otherwise moot.

III

Today's decision risks a major expansion of the judicial role. Until now, we have said that federal courts can review the legality of policies and actions only as a necessary incident to resolving real disputes. Going forward, the Judiciary will be required to perform this function whenever a plaintiff asks for a dollar. For those who want to know if their rights have been violated, the least dangerous branch will become the least expensive source of legal advice.

In an effort to downplay these consequences, the Court argues that plaintiffs who seek nominal damages will often be able to seek actual damages as well. In this case, for example, the Court notes that Uzuegbunam and Bradford "would have satisfied redressability if instead of one dollar in nominal damages they sought one dollar in compensation for a wasted bus fare to travel to the free speech zone." *Ante*, at 292. Maybe they would have, and maybe they should have. The Court is mistaken, however, to equate a small amount of actual damages with the token award of nominal damages. The former redresses a compensable harm and satisfies Article III, while the latter is a legal fiction with "no existence in point of quantity." J. Mayne, Law of Damages 27 (1856) (internal quotation marks omitted); see

Dobbs, Law of Remedies § 3.3(2), at 294 ("Nominal damages are damages in name only . . . .").

The Court also insists that not every "request for nominal damages guarantees entry to court." *Ante*, at 292. Yet its holding admits of no limiting principle. As then-Judge McConnell remarked in an insightful concurrence on the issue before us, "[i]t is hard to conceive of a case in which a plaintiff would be unable to append a claim for nominal damages, and thus insulate the case from the possibility of mootness." *Utah Animal Rights Coalition* v. *Salt Lake City Corp.*, 371 F. 3d 1248, 1266 (CA10 2004). The Court today reinforces this point by emphasizing that "*every* violation of a right imports damage," *ante*, at 293 (emphasis added; alterations and internal quotation marks omitted)—even though we have definitively and recently held that a plaintiff must allege a concrete injury even where his rights have been violated, see *Thole* v. *U. S. Bank N. A.*, 590 U. S. 538, 544 (2020) ("This Court has rejected the argument that 'a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right.'" (quoting *Spokeo, Inc.* v. *Robins*, 578 U. S. 330, 341 (2016))).

The best that can be said for the Court's sweeping exception to the case-or-controversy requirement is that it may itself admit of a sweeping exception: Where a plaintiff asks only for a dollar, the defendant should be able to end the case by giving him a dollar, without the court needing to pass on the merits of the plaintiff's claims. Although we recently reserved the question whether a defendant can moot a case by depositing the full amount requested by the plaintiff, *Campbell-Ewald Co.* v. *Gomez*, 577 U. S. 153, 166 (2016), our cases have long suggested that he can, see, *e. g.*, *California* v. *San Pablo & Tulare R. Co.*, 149 U. S. 308, 313–314 (1893). The United States agrees, arguing in its brief in "support" of the petitioners that "the defendant should be able to end the litigation without a resolution of the constitutional mer-

its, simply by accepting the entry of judgment for nominal damages against him." Brief for United States as *Amicus Curiae* 29. The defendant can even file an offer of judgment for one dollar, rendering the plaintiff liable for any subsequent costs if he receives only nominal damages. See Fed. Rule Civ. Proc. 68(d). This is a welcome caveat, and it may ultimately save federal courts from issuing reams of advisory opinions. But it also highlights the flimsiness of the Court's view of the separation of powers. The scope of our jurisdiction should not depend on whether the defendant decides to fork over a buck.

* * *

Five years after Hamilton wrote Federalist No. 78, Secretary of State Thomas Jefferson sent a letter on behalf of President George Washington to Chief Justice John Jay and the Associate Justices of the Supreme Court, asking for advice about the Nation's rights and obligations regarding the ongoing war in Europe. Washington's request must have struck him as reasonable enough, since English sovereigns regularly sought advice from their courts. Yet the Justices declined the entreaty, citing "the lines of separation drawn by the Constitution between the three departments of the government." 3 Correspondence and Public Papers of John Jay 488 (H. Johnston ed. 1891). For over two centuries, the Correspondence of the Justices has stood as a reminder that federal courts cannot give answers simply because someone asks.

The Judiciary is authorized "to say what the law is" only because "[t]hose who apply [a] rule to particular cases, must of *necessity* expound and interpret that rule." *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803) (emphasis added). Today's decision abandons that principle. When a plaintiff brings a nominal damages claim in the absence of past damages or future harm, it is not "necessary to give an opinion upon a question of law." *San Pablo*, 149 U. S., at 314. It is instead a "gratuitous" exercise of the judicial power, *Simon*

v. *Eastern Ky. Welfare Rights Organization*, 426 U. S. 26, 38 (1976), and expanding that power encroaches on the political branches and the States. Perhaps defendants will wise up and moot such claims by paying a dollar, but it is difficult to see that outcome as a victory for Article III. Rather than encourage litigants to fight over farthings, I would affirm the judgment of the Court of Appeals.

Syllabus

TORRES *v.* MADRID ET AL.

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

No. 19–292. Argued October 14, 2020—Decided March 25, 2021

Respondents Janice Madrid and Richard Williamson, officers with the New Mexico State Police, arrived at an Albuquerque apartment complex to execute an arrest warrant and approached petitioner Roxanne Torres, then standing near a Toyota FJ Cruiser. The officers attempted to speak with her as she got into the driver's seat. Believing the officers to be carjackers, Torres hit the gas to escape. The officers fired their service pistols 13 times to stop Torres, striking her twice. Torres managed to escape and drove to a hospital 75 miles away, only to be airlifted back to a hospital in Albuquerque, where the police arrested her the next day. Torres later sought damages from the officers under 42 U. S. C. § 1983. She claimed that the officers used excessive force against her and that the shooting constituted an unreasonable seizure under the Fourth Amendment. Affirming the District Court's grant of summary judgment to the officers, the Tenth Circuit held that "a suspect's continued flight after being shot by police negates a Fourth Amendment excessive-force claim." 769 Fed. Appx. 654, 657.

Held: The application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued. Pp. 311–325.

(a) The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." This Court's precedents have interpreted the term "seizure" by consulting the common law of arrest, the "quintessential" seizure of the person. *Payton* v. *New York*, 445 U. S. 573, 585; *California* v. *Hodari D.*, 499 U. S. 621, 624. In *Hodari D.*, this Court explained that the common law considered the application of physical force to the body of a person with the intent to restrain to be an arrest—not an attempted arrest—even if the person does not yield. *Id.*, at 624–625. A review of the pertinent English and American decisions confirms that the slightest touching was a constructive detention that would complete the arrest. See, *e. g.*, *Genner* v. *Sparks*, 6 Mod. 173, 87 Eng. Rep. 928.

The analysis does not change because the officers used force from a distance to restrain Torres. The required "corporal seising or touching the defendant's body," 3 W. Blackstone, Commentaries on the Laws of

England 288 (1768), can be as readily accomplished by a bullet as by the end of a finger. The focus of the Fourth Amendment is "the privacy and security of individuals," not the particular form of governmental intrusion. *Camara* v. *Municipal Court of City and County of San Francisco*, 387 U. S. 523, 528.

The application of force, standing alone, does not satisfy the rule recognized in this decision. A seizure requires the use of force with intent to restrain, as opposed to force applied by accident or for some other purpose. *County of Sacramento* v. *Lewis*, 523 U. S. 833, 844. The appropriate inquiry is whether the challenged conduct objectively manifests an intent to restrain. *Michigan* v. *Chesternut*, 486 U. S. 567, 574. This test does not depend on either the subjective motivation of the officer or the subjective perception of the suspect. Finally, a seizure by force lasts only as long as the application of force unless the suspect submits. *Hodari D.*, 499 U. S., at 625. Pp. 311–318.

(b) In place of the rule that the application of force completes an arrest, the officers would assess all seizures under one test: intentional acquisition of control. This alternative approach finds support in neither the history of the Fourth Amendment nor this Court's precedents. Pp. 318–323.

(1) The officers attempt to recast the common law doctrine recognized in *Hodari D.* as a rule applicable only to civil arrests. But the common law did not define the arrest of a debtor any differently from the arrest of a felon. Treatises and courts discussing criminal arrests articulated a rule indistinguishable from the one applied to civil arrests at common law. Pp. 318–321.

(2) The officers' contrary test would limit seizures of a person to "an intentional acquisition of physical control." *Brower* v. *County of Inyo*, 489 U. S. 593, 596. While that test properly describes seizures by control, seizures by force enjoy a separate common law pedigree that gives rise to a separate rule. A seizure by acquisition of control involves either voluntary submission to a show of authority or the termination of freedom of movement. But as common law courts recognized, any such requirement of control would be difficult to apply to seizures by force. The officers' test will often yield uncertainty about whether an officer succeeded in gaining control over a suspect. For centuries, the rule recognized in this opinion has avoided such line-drawing problems. Pp. 321–323.

(c) The officers seized Torres by shooting her with the intent to restrain her movement. This Court does not address the reasonableness of the seizure, the damages caused by the seizure, or the officers' entitlement to qualified immunity. Pp. 323–325.

Syllabus

769 Fed. Appx. 654, vacated and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which BREYER, SOTOMAYOR, KAGAN, and KAVANAUGH, JJ., joined. GORSUCH, J., filed a dissenting opinion, in which THOMAS and ALITO, JJ., joined, *post*, p. 325. BARRETT, J., took no part in the consideration or decision of the case.

Kelsi Brown Corkran argued the cause for petitioner. With her on the briefs were *E. Joshua Rosenkranz*, *Rachel G. Shalev*, *Thomas M. Bondy*, and *Eric D. Dixon*.

Rebecca Taibleson argued the cause for the United States as *amicus curiae* urging vacatur. With her on the brief were *Solicitor General Francisco*, *Assistant Attorneys General Benczkowski* and *Dreiband*, *Deputy Solicitor General Feigin*, *Deputy Assistant Attorney General Maugeri*, *Tovah R. Calderon*, *Jenny C. Ellickson*, and *Brant S. Levine*.

Mark D. Standridge argued the cause for respondents. With him on the brief were *Mark D. Jarmie*, *Christina L. G. Brennan*, *James P. Sullivan*, and *Elizabeth Anne Trickey*.*

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*Briefs of *amici curiae* urging reversal were filed for the American Association for Justice et al. by *Anton Metlitsky*, *Daniel J. Tully*, *Clark M. Neily III*, and *Jay R. Schweikert*; for the American Civil Liberties Union et al. by *David D. Cole*, *Dan Alban*, *Baher Azmy*, *Vanita Gupta*, *Michael Zubrensky*, *Lynda Garcia*, *John Burton*, and *R. Samuel Paz*; for the Constitutional Accountability Center by *Elizabeth B. Wydra*, *Brianne J. Gorod*, *David H. Gans*, and *Brian R. Frazelle*; for Fourth Amendment Scholars by *Ginger D. Anders*, *David P. Thoreson*, and *Brian J. Springer*; for the NAACP Legal Defense & Educational Fund, Inc., by *Daniel Harawa*, *Sherrilyn A. Ifill*, *Janai S. Nelson*, *Samuel Spital*, *Jin Hee Lee*, *Kevin E. Jason*, and *Ashok Chandran*; and for The Rutherford Institute et al. by *Jeffrey T. Green*, *Sarah O'Rourke Schrup*, *John W. Whitehead*, and *Barbara E. Bergman*.

Briefs of *amici curiae* urging affirmance were filed for the National Association of Counties et al. by *Elizabeth B. Prelogar*, *Barrett J. Anderson*, *Jeanne Detch*, and *Lisa Soronen*; and for Restore the Fourth, Inc., by *Mahesha P. Subbaraman*.

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The Fourth Amendment prohibits unreasonable "seizures" to safeguard "[t]he right of the people to be secure in their persons." Under our cases, an officer seizes a person when he uses force to apprehend her. The question in this case is whether a seizure occurs when an officer shoots someone who temporarily eludes capture after the shooting. The answer is yes: The application of physical force to the body of a person with intent to restrain is a seizure, even if the force does not succeed in subduing the person.

I

At dawn on July 15, 2014, four New Mexico State Police officers arrived at an apartment complex in Albuquerque to execute an arrest warrant for a woman accused of white collar crimes, but also "suspected of having been involved in drug trafficking, murder, and other violent crimes." App. to Pet. for Cert. 11a. What happened next is hotly contested. We recount the facts in the light most favorable to petitioner Roxanne Torres because the court below granted summary judgment to Officers Janice Madrid and Richard Williamson, the two respondents here. *Tolan* v. *Cotton*, 572 U. S. 650, 655–656 (2014) (*per curiam*).

The officers observed Torres standing with another person near a Toyota FJ Cruiser in the parking lot of the complex. Officer Williamson concluded that neither Torres nor her companion was the target of the warrant. As the officers approached the vehicle, the companion departed, and Torres—at the time experiencing methamphetamine withdrawal—got into the driver's seat. The officers attempted to speak with her, but she did not notice their presence until one of them tried to open the door of her car.

Although the officers wore tactical vests marked with police identification, Torres saw only that they had guns. She

thought the officers were carjackers trying to steal her car, and she hit the gas to escape them. Neither Officer Madrid nor Officer Williamson, according to Torres, stood in the path of the vehicle, but both fired their service pistols to stop her. All told, the two officers fired 13 shots at Torres, striking her twice in the back and temporarily paralyzing her left arm.

Steering with her right arm, Torres accelerated through the fusillade of bullets, exited the apartment complex, drove a short distance, and stopped in a parking lot. After asking a bystander to report an attempted carjacking, Torres stole a Kia Soul that happened to be idling nearby and drove 75 miles to Grants, New Mexico. The good news for Torres was that the hospital in Grants was able to airlift her to another hospital where she could receive appropriate care. The bad news was that the hospital was back in Albuquerque, where the police arrested her the next day. She pleaded no contest to aggravated fleeing from a law enforcement officer, assault on a peace officer, and unlawfully taking a motor vehicle.

Torres later sought damages from Officers Madrid and Williamson under 42 U. S. C. § 1983, which provides a cause of action for the deprivation of constitutional rights by persons acting under color of state law. She claimed that the officers applied excessive force, making the shooting an unreasonable seizure under the Fourth Amendment. The District Court granted summary judgment to the officers, and the Court of Appeals for the Tenth Circuit affirmed on the ground that "a suspect's continued flight after being shot by police negates a Fourth Amendment excessive-force claim." 769 Fed. Appx. 654, 657 (2019). The court relied on Circuit precedent providing that "no seizure can occur unless there is physical touch or a show of authority," and that "such physical touch (or force) must terminate the suspect's movement" or otherwise give rise to physical control over the suspect. *Brooks* v. *Gaenzle*, 614 F. 3d 1213, 1223 (2010).

We granted certiorari. 589 U. S. 1126 (2019).

II

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." This case concerns the "seizure" of a "person," which can take the form of "physical force" or a "show of authority" that "in some way restrain[s] the liberty" of the person. *Terry* v. *Ohio*, 392 U. S. 1, 19, n. 16 (1968). The question before us is whether the application of physical force is a seizure if the force, despite hitting its target, fails to stop the person.

We largely covered this ground in *California* v. *Hodari D.*, 499 U. S. 621 (1991). There we interpreted the term "seizure" by consulting the common law of arrest, the "quintessential 'seizure of the person' under our Fourth Amendment jurisprudence." *Id.*, at 624. As Justice Scalia explained for himself and six other Members of the Court, the common law treated "the mere grasping or application of physical force with lawful authority" as an arrest, "whether or not it succeeded in subduing the arrestee." *Ibid.*; see *id.*, at 625 ("merely touching" sufficient to constitute an arrest). Put another way, an officer's application of physical force to the body of a person "'for the purpose of arresting him'" was itself an arrest—not an *attempted* arrest—even if the person did not yield. *Id.*, at 624 (quoting *Whithead* v. *Keyes*, 85 Mass. 495, 501 (1862)).

The common law distinguished the application of force from a show of authority, such as an order for a suspect to halt. The latter does not become an arrest unless and until the arrestee complies with the demand. As the Court explained in *Hodari D.*, "[a]n arrest requires *either* physical force . . . *or*, where that is absent, *submission* to the assertion of authority." 499 U. S., at 626 (emphasis in original).

Hodari D. articulates two pertinent principles. First, common law arrests are Fourth Amendment seizures. And second, the common law considered the application of force to the body of a person with intent to restrain to be an ar-

rest, no matter whether the arrestee escaped. We need not decide whether *Hodari D.*, which principally concerned a show of authority, controls the outcome of this case as a matter of *stare decisis*, because we independently reach the same conclusions.

At the adoption of the Fourth Amendment, a "seizure" was the "act of taking by warrant" or "of laying hold on suddenly"—for example, when an "officer seizes a thief." 2 N. Webster, An American Dictionary of the English Language 67 (1828) (Webster) (emphasis deleted). A seizure did not necessarily result in actual control or detention. It is true that, when speaking of property, "[f]rom the time of the founding to the present, the word 'seizure' has meant a 'taking possession.'" *Hodari D.*, 499 U. S., at 624 (quoting 2 Webster 67). But the Framers selected a term—seizure—broad enough to apply to all the concerns of the Fourth Amendment: "persons," as well as "houses, papers, and effects." As applied to a person, "[t]he word 'seizure' readily bears the meaning of a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful." 499 U. S., at 626. Then, as now, an ordinary user of the English language could remark: "She seized the purse-snatcher, but he broke out of her grasp." *Ibid.*

The "seizure" of a "person" plainly refers to an arrest. That linkage existed at the founding. Samuel Johnson, for example, defined an "arrest" as "[a]ny . . . seizure of the person." 1 A Dictionary of the English Language 108 (4th ed. 1773). And that linkage persists today. As we have repeatedly recognized, "the arrest of a person is quintessentially a seizure." *Payton* v. *New York*, 445 U. S. 573, 585 (1980) (internal quotation marks omitted); see *Hodari D.*, 499 U. S., at 624.

Because arrests are seizures of a person, *Hodari D.* properly looked to the common law of arrest for "historical under-

standings 'of what was deemed an unreasonable search and seizure when the Fourth Amendment was adopted.'" *Carpenter* v. *United States*, 585 U. S. 296, 305 (2018) (quoting *Carroll* v. *United States*, 267 U. S. 132, 149 (1925); alteration omitted). Sometimes the historical record will not yield a well-settled legal rule. See, *e. g.*, *Atwater* v. *Lago Vista*, 532 U. S. 318, 327–328 (2001); *Payton*, 445 U. S., at 593–596. We do not face that problem here. The cases and commentary speak with virtual unanimity on the question before us today.

The common law rule identified in *Hodari D.*—that the application of force gives rise to an arrest, even if the officer does not secure control over the arrestee—achieved recognition to such an extent that English lawyers could confidently (and accurately) proclaim that "[a]ll the authorities, from the earliest time to the present, establish that a corporal touch is sufficient to constitute an arrest, even though the defendant do not submit." *Nicholl* v. *Darley*, 2 Y. & J. 399, 400, 148 Eng. Rep. 974 (Exch. 1828) (citing *Hodges* v. *Marks*, Cro. Jac. 485, 79 Eng. Rep. 414 (K. B. 1615)). The slightest application of force could satisfy this rule. In *Genner* v. *Sparks*, 6 Mod. 173, 87 Eng. Rep. 928 (Q. B. 1704), the defendant did not submit to the authority of an arrest warrant, but the court explained that the bailiff would have made an arrest if he "had but touched the defendant even with the end of his finger." *Ibid.*, 87 Eng. Rep., at 929. So too, if a "bailiff caught one by the hand (whom he had a warrant to arrest) as he held it out of a window," that alone would accomplish an arrest. *Anonymus*, 1 Vent. 306, 86 Eng. Rep. 197 (K. B. 1677). The touching of the person—frequently called a laying of hands—was enough. See *Dunscomb* v. *Smith*, Cro. Car. 164, 79 Eng. Rep. 743 (K. B. 1629). Only later did English law grow to recognize arrest without touching through a submission to a show of authority. See *Horner* v. *Battyn*, Bull. N. P. 62 (K. B. 1738), reprinted in W. Loyd, Cases on Civil Procedure 798 (1916). Even so, the traditional rule

persisted that all an arrest required was "corporal seising or touching the defendant's body." 3 W. Blackstone, Commentaries on the Laws of England 288 (1768) (Blackstone).

Early American courts adopted this mere-touch rule from England, just as they embraced other common law principles of search and seizure. See *Wilson* v. *Arkansas*, 514 U. S. 927, 933 (1995). Justice Baldwin, instructing a jury in his capacity as Circuit Justice, defined an arrest to include "touching or putting hands upon [the arrestee] in the execution of process." *United States* v. *Benner*, 24 F. Cas. 1084, 1086–1087 (No. 14,568) (CC ED Pa. 1830). State courts agreed that "any touching, however slight, is enough," *Butler* v. *Washburn*, 25 N. H. 251, 258 (1852), provided the officer made his intent to arrest clear, see *Jones* v. *Jones*, 35 N. C. 448, 448–449 (1852). Courts continued to hold that an arrest required only the application of force—not control or custody—through the framing of the Fourteenth Amendment, which incorporated the protections of the Fourth Amendment against the States. See *Whithead*, 85 Mass., at 501; *Searls* v. *Viets*, 2 Thomp. & C. 224, 226 (N. Y. Sup. Ct. 1873); *State* v. *Dennis*, 16 Del. 433, 436–437, 43 A. 261, 262 (1895); see also H. Voorhees, The Law of Arrest in Civil and Criminal Actions § 74, p. 44 (1904).

Stated simply, the cases "abundantly shew that the slightest touch [was] an arrest in point of law." *Nicholl*, 2 Y. & J., at 404, 148 Eng. Rep., at 976. Indeed, it was not even required that the officer have, at the time of such an arrest, "the power of keeping the party so arrested under restraint." *Sandon* v. *Jervis*, El. Bl. & El. 935, 940, 120 Eng. Rep. 758, 760 (Q. B. 1858). The consequences would be "pernicious," an English judge worried, if the question of control "were perpetually to be submitted to a jury." *Ibid.*; cf. 3 Blackstone 120 (describing how "[t]he least touching of another's person" could satisfy the common law definition of force to commit battery, "for the law cannot draw the line between different degrees of violence").

This case, of course, does not involve "laying hands," *Sheriff* v. *Godfrey*, 7 Mod. 288, 289, 87 Eng. Rep. 1247 (K. B. 1739), but instead a shooting. Neither the parties nor the United States as *amicus curiae* suggests that the officers' use of bullets to restrain Torres alters the analysis in any way. And we are aware of no common law authority addressing an arrest under such circumstances, or indeed any case involving an application of force from a distance.

The closest decision seems to be *Countess of Rutland's Case*, 6 Co. Rep. 52b, 77 Eng. Rep. 332 (Star Chamber 1605). In that case, serjeants-at-mace tracked down Isabel Holcroft, Countess of Rutland, to execute a writ for a judgment of debt. They "shewed her their mace, and touching her body with it, said to her, we arrest you, madam." *Id.*, at 54a, 77 Eng. Rep., at 336. We think the case is best understood as an example of an arrest made by touching with an object, for the serjeants-at-mace announced the arrest at the time they touched the countess with the mace. See, *e. g.*, *Hodges*, Cro. Jac., at 485, 79 Eng. Rep., at 414 (similar announcement upon laying of hands). Maybe the arrest could be viewed as a submission to a show of authority, because a mace served not only as a weapon but also as an insignia of office. See Kelly, The Great Mace, and Other Corporation Insignia of the Borough of Leicester, 3 Transactions of the Royal Hist. Soc. 295, 296–301 (1874). But that view is difficult to reconcile with the fact that English courts did not recognize arrest by submission to a show of authority until the following century. See *supra*, at 313.*

*The arrest was not Isabel's first brush with the law or money troubles. A decade earlier, Elizabeth Charlton sued to recover for the estate of her husband, the fourth Earl of Rutland, an assortment of jewels allegedly taken by Isabel, the widow of the third Earl of Rutland. Elizabeth bested Isabel in the clash of the countesses, and Isabel was found liable for 940 pounds, worth about $400,000 today. *Elizabeth Countess of Rutland* v. *Isabel Countess of Rutland*, Cro. Eliz. 377, 78 Eng. Rep. 624 (C. P. 1595).

However one reads *Countess of Rutland*, we see no basis for drawing an artificial line between grasping with a hand and other means of applying physical force to effect an arrest. The dissent (though not the officers) argues that the common law limited arrests by force to the literal placement of hands on the suspect, because no court published an opinion discussing a suspect who continued to flee after being hit with a bullet or some other weapon. See *post*, at 342–344 (opinion of GORSUCH, J.). This objection calls to mind the unavailing defense of the person who "persistently denied that he had laid hands upon a priest, for he had only cudgelled and kicked him." 2 S. Pufendorf, De Jure Naturae et Gentium 795 (C. Oldfather & W. Oldfather transl. 1934). The required "corporal seising or touching the defendant's body" can be as readily accomplished by a bullet as by the end of a finger. 3 Blackstone 288.

We will not carve out this greater intrusion on personal security from the mere-touch rule just because founding-era courts did not confront apprehension by firearm. While firearms have existed for a millennium and were certainly familiar at the founding, we have observed that law enforcement did not carry handguns until the latter half of the 19th century, at which point "it bec[a]me possible to use deadly force from a distance as a means of apprehension." *Tennessee* v. *Garner*, 471 U. S. 1, 14–15 (1985). So it should come as no surprise that neither we nor the dissent has located a common law case in which an officer used a gun to apprehend a suspect. Cf. *post*, at 344 (discussing *Dickenson* v. *Watson*, Jones, T. 205, 84 Eng. Rep. 1218, 1218–1219 (K. B. 1682), in which a tax collector accidentally discharged hailshot into a passerby's eye). But the focus of the Fourth Amendment is "the privacy and security of individuals," not the particular manner of "arbitrary invasion[ ] by governmental officials." *Camara* v. *Municipal Court of City and County of San Francisco*, 387 U. S. 523, 528 (1967). As noted, our precedent protects "that degree of privacy against government

that existed when the Fourth Amendment was adopted," *Kyllo* v. *United States*, 533 U. S. 27, 34 (2001)—a protection that extends to "[s]ubtler and more far-reaching means of invading privacy" adopted only later, *Olmstead* v. *United States*, 277 U. S. 438, 473 (1928) (Brandeis, J., dissenting). There is nothing subtle about a bullet, but the Fourth Amendment preserves personal security with respect to methods of apprehension old and new.

We stress, however, that the application of the common law rule does not transform every physical contact between a government employee and a member of the public into a Fourth Amendment seizure. A seizure requires the use of force *with intent to restrain*. Accidental force will not qualify. See *County of Sacramento* v. *Lewis*, 523 U. S. 833, 844 (1998). Nor will force intentionally applied for some other purpose satisfy this rule. In this opinion, we consider only force used to apprehend. We do not accept the dissent's invitation to opine on matters not presented here—pepper spray, flash-bang grenades, lasers, and more. *Post*, at 347.

Moreover, the appropriate inquiry is whether the challenged conduct *objectively* manifests an intent to restrain, for we rarely probe the subjective motivations of police officers in the Fourth Amendment context. See *Nieves* v. *Bartlett*, 587 U. S. 391, 403 (2019). Only an objective test "allows the police to determine in advance whether the conduct contemplated will implicate the Fourth Amendment." *Michigan* v. *Chesternut*, 486 U. S. 567, 574 (1988). While a mere touch can be enough for a seizure, the amount of force remains pertinent in assessing the objective intent to restrain. A tap on the shoulder to get one's attention will rarely exhibit such an intent. See *INS* v. *Delgado*, 466 U. S. 210, 220 (1984); *Jones*, 35 N. C., at 448–449.

Nor does the seizure depend on the subjective perceptions of the seized person. Here, for example, Torres claims to have perceived the officers' actions as an attempted carjack-

ing. But the conduct of the officers—ordering Torres to stop and then shooting to restrain her movement—satisfies the objective test for a seizure, regardless whether Torres comprehended the governmental character of their actions.

The rule we announce today is narrow. In addition to the requirement of intent to restrain, a seizure by force—absent submission—lasts only as long as the application of force. That is to say that the Fourth Amendment does not recognize any "*continuing* arrest during the period of fugitivity." *Hodari D.*, 499 U. S., at 625. The fleeting nature of some seizures by force undoubtedly may inform what damages a civil plaintiff may recover, and what evidence a criminal defendant may exclude from trial. See, *e. g.*, *Utah* v. *Strieff*, 579 U. S. 232, 237–238 (2016). But brief seizures are seizures all the same.

Applying these principles to the facts viewed in the light most favorable to Torres, the officers' shooting applied physical force to her body and objectively manifested an intent to restrain her from driving away. We therefore conclude that the officers seized Torres for the instant that the bullets struck her.

III

In place of the rule that the application of force completes an arrest even if the arrestee eludes custody, the officers would introduce a single test for all types of seizures: intentional acquisition of control. This alternative rule is inconsistent with the history of the Fourth Amendment and our cases.

A

The officers and their *amici* stress that common law rules are not automatically "elevated to constitutional proscriptions," *Hodari D.*, 499 U. S., at 626, n. 2, especially if they are "distorted almost beyond recognition when literally applied," *Garner*, 471 U. S., at 15. In their view, the common law doctrine recognized in *Hodari D.* is just "a narrow legal rule

intended to govern liability in civil cases involving debtors." Brief for National Association of Counties et al. as *Amici Curiae* 12. The dissent presses the same argument. See *post*, at 339–341.

But the common law did not define the arrest of a debtor any differently from the arrest of a felon. Whether the arrest was authorized by a criminal indictment or a civil writ, "there must be a corporal seizing, or touching the defendant's person; or, what is tantamount, a power of taking immediate possession of the body, and the party's submission thereto, and a declaration of the officer that he makes an arrest." 1 J. Backus, A Digest of Laws Relating to the Offices and Duties of Sheriff, Coroner and Constable 115–116 (1812). Treatises on the law governing criminal arrests cited *Genner* v. *Sparks*, 6 Mod. 173, 87 Eng. Rep. 928—the preeminent mere-touch case involving a debtor—for the proposition that, "[i]n making the arrest, the constable or party making it should actually seize or touch the offender's body, or otherwise restrain his liberty." 1 R. Burn, The Justice of the Peace 275 (28th ed. 1837). When English courts confronted arrests for criminal offenses, they too relied on precedents concerning arrests for civil offenses. See *Bridgett* v. *Coyney*, 1 Man. & Ryl. 1, 5–6 (K. B. 1827); *Arrowsmith* v. *Le Mesurier*, 2 Bos. & Pul. 211, 211–212, 127 Eng. Rep. 605, 606 (C. P. 1806). American courts likewise articulated a materially identical definition in criminal cases—that "[t]he arrest itself is the laying hands on the defendant," *State* v. *Townsend*, 5 Del. 487, 488 (Ct. Gen. Sess. 1854), or that an arrest is "the taking, seizing, or detaining of the person of another, either by touching him or putting hands on him," *McAdams* v. *State*, 30 Okla. Crim. 207, 210, 235 P. 241, 242 (1925).

This uniform definition also explains why an arrest by mere touch carried legal consequences in both the criminal and civil contexts. The point of an arrest was of course to take custody of a person to secure his appearance at a pro-

ceeding. But some arrests did not culminate in actual control of the individual, let alone a trip to the gaol or compter. See *Nicholl*, 2 Y. & J., at 403–404, 148 Eng. Rep., at 975–976. When an officer let an arrestee get away, the officer risked becoming a defendant himself in an action for "escape." See Perkins, The Law of Arrest, 25 Iowa L. Rev. 201, 204 (1940). The laying of hands constituted a taking custody and would expose the officer to liability for the escape of felons and debtors alike. See 1 M. Hale, Pleas of the Crown 590–591, 597, 603 (1736); 2 *id.*, at 93 (no liability for escape "if the felon were not once in the hands of an officer"); see also Perkins, 25 Iowa L. Rev., at 206.

The tort of false imprisonment, which the dissent rightly acknowledges as the "'closest analogy' to an arrest without probable cause," *post*, at 336 (quoting *Wallace* v. *Kato*, 549 U. S. 384, 388–389 (2007)), reinforces the conclusion that the common law considered touching to be a seizure. Stated generally, false imprisonment required "confinement," such as "taking a person into custody under an asserted legal authority." Restatement of Torts §§ 35, 41 (1934); see 3 Blackstone 127. But that element of confinement demanded no more than that the defendant "had for one moment taken possession of the plaintiff's person"—including, "for example, if he had tapped her on the shoulder, and said, 'You are my prisoner.'" *Simpson* v. *Hill*, 1 Esp. 431, 431–432, 170 Eng. Rep. 409 (N. P. 1795); see Restatement of Torts § 41, Comment *h* (noting that "the touching alone of the person against whom [legal authority] was asserted would be sufficient to constitute" confinement by arrest when the authority was valid). While the dissent emphasizes that "the court [in *Simpson*] proceeded to *reject* the plaintiff's claim for false imprisonment," *post*, at 337, that was only because "the constable never touched the plaintiff, or took her into custody." 1 Esp., at 431, 170 Eng. Rep., at 409.

To be sure, the mere-touch rule was particularly well documented in cases involving the execution of civil process. An

officer pursuing a debtor could not forcibly enter the debtor's home unless the debtor had escaped arrest, such as by fleeing after being touched. See *Semayne's Case*, 5 Co. Rep. 91a, 91b, 77 Eng. Rep. 194, 196 (K. B. 1604); see also *Miller* v. *United States*, 357 U. S. 301, 307 (1958). Officers seeking to execute criminal process, on the other hand, possessed greater pre-arrest authority to enter a felon's home. See *Payton*, 445 U. S., at 598. But the fact that the common law rules of arrest generated more litigation in the civil context proves only that creditors had ready recourse to the courts to pursue escape actions for unsatisfactory arrests. There is no reason to suspect that English jurists silently adopted a special definition of arrest only for debt collection—indeed, they told us just the opposite. See *supra*, at 319. Nothing specific to debt collection elevated escape from arrest into a justification for entry of the home. Whenever a person was "lawfully arrested for *any* Cause and afterwards escape[d], and shelter[ed] himself in a House," the officer could break open the doors of the house. 2 W. Hawkins, Pleas of the Crown 87 (1721) (emphasis added).

In any event, the officers and the dissent misapprehend the history of the Fourth Amendment by minimizing the role of practices in civil cases. "[A]rrests in civil suits were still common in America" at the founding. *Long* v. *Ansell*, 293 U. S. 76, 83 (1934). And questions regarding the legality of an arrest "typically arose in civil damages actions for trespass or false arrest." *Payton*, 445 U. S., at 592. Accordingly, this Court has not hesitated to rely on such decisions when interpreting the Fourth Amendment. See, *e. g.*, *United States* v. *Jones*, 565 U. S. 400, 404–405 (2012); *Boyd* v. *United States*, 116 U. S. 616, 626 (1886). We see no reason to break with our settled approach in this case.

B

The officers and the dissent derive from our cases a different touchstone for the seizure of a person: "an intentional

acquisition of physical control." *Brower* v. *County of Inyo*, 489 U. S. 593, 596 (1989). Under their alternative rule, the use of force becomes a seizure "only when there is a governmental termination of freedom of movement through means intentionally applied." *Id.*, at 597 (emphasis deleted); see Brief for Respondents 12–15; *post*, at 330–331.

This approach improperly erases the distinction between seizures by *control* and seizures by *force*. In all fairness, we too have not always been attentive to this distinction when a case did not implicate the issue. See, *e. g.*, *Brendlin* v. *California*, 551 U. S. 249, 254 (2007). But each type of seizure enjoys a separate common law pedigree that gives rise to a separate rule. See *Hodari D.*, 499 U. S., at 624–625; A. Cornelius, The Law of Search and Seizure § 47, pp. 163–164 (2d ed. 1930) (contrasting actual control with "constructive detention" by touching).

Unlike a seizure by force, a seizure by acquisition of control involves either voluntary submission to a show of authority or the termination of freedom of movement. A prime example of the latter comes from *Brower*, where the police seized a driver when he crashed into their roadblock. 489 U. S., at 598–599; see also, *e. g.*, *Scott* v. *Harris*, 550 U. S. 372, 385 (2007) (ramming car off road); *Williams* v. *Jones*, Cas. t. Hard. 299, 301, 95 Eng. Rep. 193, 194 (K. B. 1736) (locking person in room). Under the common law rules of arrest, actual control is a necessary element for this type of seizure. See Wilgus, Arrest Without a Warrant, 22 Mich. L. Rev. 541, 553 (1924). Such a seizure requires that "a person be stopped by the very instrumentality set in motion or put in place in order to achieve that result." *Brower*, 489 U. S., at 599. But that requirement of control or submission never extended to seizures by force. See, *e. g.*, *Sandon*, El. Bl. & El., at 940–941, 120 Eng. Rep., at 760.

As common law courts recognized, any such requirement of control would be difficult to apply in cases involving the

application of force. See *supra*, at 314. At the most basic level, it will often be unclear when an officer succeeds in gaining control over a struggling suspect. Courts will puzzle over whether an officer exercises control when he grabs a suspect, when he tackles him, or only when he slaps on the cuffs. Neither the officers nor the dissent explains how long the control must be maintained—only for a moment, into the squad car, or all the way to the station house. To cite another example, counsel for the officers speculated that the shooting would have been a seizure if Torres stopped "maybe 50 feet" or "half a block" from the scene of the shooting to allow the officers to promptly acquire control. Tr. of Oral Arg. 45. None of this squares with our recognition that "'[a] seizure is a single act, and not a continuous fact.'" *Hodari D.*, 499 U. S., at 625 (quoting *Thompson* v. *Whitman*, 18 Wall. 457, 471 (1874)). For centuries, the common law rule has avoided such line-drawing problems by clearly fixing the moment of the seizure.

IV

The dissent sees things differently. It insists that the term "seizure" has always entailed a taking of possession, whether the officer is seizing a person, a ship, or a promissory note. See *post*, at 330–331. But the facts of the cases and the language of the opinions confirm that the concept of possession included the "constructive detention" of persons "never actually brought within the physical control of the party making an arrest." Wilgus, 22 Mich. L. Rev., at 556 (emphasis deleted); see, *e. g.*, *Nicholl*, 2 Y. & J., at 404, 148 Eng. Rep., at 976 (explaining that the "slightest touch" can constitute "custody"); *Anonymus*, 1 Vent., at 306, 86 Eng. Rep., at 197 (describing a touch as a "taking" of a person). Even the dissent acknowledges that a touch can establish a form of constructive possession. See *post*, at 344.

The dissent says that "common law courts never contemplated" that the touching itself could effect a seizure. *Post*, at 342. But one need only look at the many decisions adopt-

ing that definition of arrest. See *supra*, at 313–315, 319–320. The dissent can offer no case expressing doubt about the rule that the touching constitutes an arrest, much less refusing to apply that rule in any context—felon or debtor. And we have, as noted, definitively stated that "the arrest of a person is quintessentially a seizure." *Payton*, 445 U. S., at 585 (internal quotation marks omitted). The dissent's attempt to ignore arrests it appraises as "unfortunate" or "peculiar," *post*, at 339, 340, pays insufficient regard to the complete history underlying the Fourth Amendment.

The dissent argues that we advance a "schizophrenic reading of the word 'seizure.'" *Post*, at 332. But our cases demonstrate the unremarkable proposition that the nature of a seizure can depend on the nature of the object being seized. It is not surprising that the concept of constructive detention or the mere-touch rule developed in the context of seizures of a person—capable of fleeing and with an interest in doing so—rather than seizures of "houses, papers, and effects."

The dissent also criticizes us for "posit[ing] penumbras" of "privacy" and "personal security" in our analysis of the Fourth Amendment. *Post*, at 348. But the *text* of the Fourth Amendment expressly guarantees the "right of the people to be *secure* in their *persons*," and our earliest precedents recognized privacy as the "essence" of the Amendment—not some penumbral emanation. *Boyd*, 116 U. S., at 630. We have relied on that understanding in construing the meaning of the Amendment. See, *e. g.*, *Riley* v. *California*, 573 U. S. 373, 403 (2014).

The dissent speculates that the real reason for today's decision is an "impulse" to provide relief to Torres, *post*, at 348, or maybe a desire "to make life easier for ourselves," *post*, at 346. It may even be, says the dissent, that the Court "at least hopes to be seen as trying" to achieve particular goals. *Post*, at 349. There is no call for such surmise. At the end of the day we simply agree with the analysis of the common law of arrest and its relation to the Fourth Amendment set

forth thirty years ago by Justice Scalia, joined by six of his colleagues, rather than the competing view urged by the dissent today.

* * *

We hold that the application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued. Of course, a seizure is just the first step in the analysis. The Fourth Amendment does not forbid all or even most seizures—only unreasonable ones. All we decide today is that the officers seized Torres by shooting her with intent to restrain her movement. We leave open on remand any questions regarding the reasonableness of the seizure, the damages caused by the seizure, and the officers' entitlement to qualified immunity.

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

It is so ordered.

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

JUSTICE GORSUCH, with whom JUSTICE THOMAS and JUSTICE ALITO join, dissenting.

The majority holds that a criminal suspect can be simultaneously seized and roaming at large. On the majority's account, a Fourth Amendment "seizure" takes place whenever an officer "merely touches" a suspect. It's a seizure even if the suspect refuses to stop, evades capture, and rides off into the sunset never to be seen again. That view is as mistaken as it is novel.

Until today, a Fourth Amendment "seizure" has required taking possession of someone or something. To reach its contrary judgment, the majority must conflate a seizure with its attempt and confuse an arrest with a battery. In the

process, too, the majority must disregard the Constitution's original and ordinary meaning, dispense with our conventional interpretive rules, and bypass the main currents of the common law. Unable to rely on any of these traditional sources of authority, the majority is left to lean on (really, repurpose) an abusive and long-abandoned English debt-collection practice. But there is a reason why, in two centuries filled with litigation over the Fourth Amendment's meaning, this Court has never before adopted the majority's definition of a "seizure." Neither the Constitution nor common sense can sustain it.

I

A

This case began when two Albuquerque police officers approached Roxanne Torres on foot. The officers thought Ms. Torres was the subject of an arrest warrant and suspected of involvement in murder and drug trafficking. As it turned out, they had the wrong person; Ms. Torres was the subject of a *different* arrest warrant. As she saw the officers walk toward her, Ms. Torres responded by getting into her car and hitting the gas. At the time, Ms. Torres admits, she was "tripping out bad" on methamphetamine. Fearing the oncoming car was about to hit them, the officers fired their duty weapons, and two bullets struck Ms. Torres while others hit her car.

None of that stopped Ms. Torres. She continued driving—over a curb, across some landscaping, and into a street, eventually colliding with another vehicle. Abandoning her car, she promptly stole a different one parked nearby. Ms. Torres then drove over 75 miles to another city. When she eventually sought medical treatment, doctors decided she needed to be airlifted back to Albuquerque for more intensive care. Only at that point, a day after her encounter with the officers, was Ms. Torres finally identified and arrested. Ultimately, she pleaded no contest to assault on a

police officer, aggravated fleeing from an officer, and the unlawful taking of a motor vehicle.

More than two years later, Ms. Torres sued the officers for damages in federal court under 42 U. S. C. § 1983. She alleged that they had violated the Fourth Amendment by unreasonably "seizing" her. After discovery, the officers moved for summary judgment. The district court granted the motion, and the court of appeals affirmed. Individuals like Ms. Torres are free to sue officers under New Mexico state law for assault or battery. They may also sue officers under the Fourteenth Amendment for conduct that "shocks the conscience." But under longstanding circuit precedent, the courts explained, a Fourth Amendment "seizure" occurs only when the government obtains "physical control" over a person or object. Because Ms. Torres "managed to elude the police for at least a full day after being shot," the courts reasoned, the officers' bullets had not "seized" her; any seizure took place only when she was finally arrested back in Albuquerque the following day. *Torres* v. *Madrid*, 769 Fed. Appx. 654, 657 (CA10 2019).

B

Now before us, Ms. Torres argues that this Court's decision in *California* v. *Hodari D.*, 499 U. S. 621 (1991), "compel[s] reversal." Brief for Petitioner 25. As she reads it, *Hodari D.* held that a Fourth Amendment seizure takes place whenever an officer shoots or even "mere[ly] touch[es]" an individual with the intent to restrain. Brief for Petitioner 15.

Whatever one thinks of Ms. Torres's argument, one thing is certain: *Hodari D.* has generated considerable confusion. There, officers chased a suspect on foot. 499 U. S., at 623. Later, the suspect argued that he was "seized" for purposes of the Fourth Amendment the moment the chase began. See *id.*, at 625. Though *he* fled, the suspect argued, a "reasonable person" would not have felt at liberty given the offi-

cers' "show of authority," so a Fourth Amendment seizure had occurred. *Id.*, at 627–628.

The Court rejected this argument. In doing so, it explained that, "[f]rom the time of the founding to the present, the word 'seizure' has meant a 'taking possession.'" *Id.*, at 624. Because the defendant did not submit to the officers' show of authority, the Court reasoned, the officers' conduct amounted at most to an attempted seizure. See *id.*, at 626, and n. 2. And "neither usage nor common-law tradition makes an *attempted* seizure a seizure." *Ibid.*

At the same time, and as Ms. Torres emphasizes, the Court didn't end its discussion there. It proceeded to imagine a different and hypothetical case, one in which the officers not only chased the suspect but also "appl[ied] physical force" to him. In these circumstances, the Court suggested, "merely touching" a suspect, even when officers fail to gain possession, might qualify as a seizure. *Id.*, at 624–625.

Unsurprisingly, these dueling passages in *Hodari D.* led to a circuit split. For the first time, some lower courts began holding that a "mere touch" constitutes a Fourth Amendment "seizure." Others, however, continued to adhere to the view, taken "[f]rom the time of the founding to the present," that the word "seizure" means "taking possession." *Id.*, at 624 (internal quotation marks omitted). We took this case to sort out the confusion.

II

As an initial matter, Ms. Torres is mistaken that *Hodari D.*'s discussion of "mere touch" seizures compels a ruling in her favor. Under the doctrine of *stare decisis*, we normally afford prior holdings of this Court considerable respect. But, in the course of issuing their holdings, judges sometimes include a "witty opening paragraph, the background information on how the law developed," or "digressions speculating on how similar hypothetical cases might be resolved." B. Garner et al., The Law of Judicial Precedent 44 (2016). Such

asides are dicta. The label is hardly an epithet: "Dicta may afford litigants the benefit of a fuller understanding of the court's decisional path or related areas of concern." *Id.*, at 65. Dicta can also "be a source of advice to successors." *Ibid.* But whatever utility it may have, dicta cannot bind future courts.

This ancient rule serves important purposes. A passage unnecessary to the outcome may not be fully considered. Parties with little at stake in a hypothetical question may afford it little or no adversarial testing. And, of course, federal courts possess no authority to issue rulings beyond the cases and controversies before them. If the respect we afford past holdings under the doctrine of *stare decisis* may be justified in part as an act of judicial humility, respecting that doctrine's limits must be too. Fewer things could be less humble than insisting our every passing surmise constitutes a rule forever binding a Nation of over 300 million people. No judge can see around every corner, predict the future, or fairly resolve matters not at issue. See, *e. g.*, *Cohens* v. *Virginia*, 6 Wheat. 264, 399–400 (1821); *Central Va. Community College* v. *Katz*, 546 U. S. 356, 363 (2006).

On any account, the passage in *Hodari D.* Ms. Torres seeks to invoke was dicta. The only question presented in that case was whether officers seize a defendant by a show of authority *without* touching him. The Court answered that question in the negative. The separate question whether a "mere touch" *also* qualifies as a seizure was not presented by facts of the case. No party briefed the issue. And the opinion offered the matter only shallow consideration, resting on just three sources: A state court opinion from the 1860s, a "comment" in the 1934 Restatement of Torts, and a 1930s legal treatise. See 499 U. S., at 624–625.

Already some lower courts, including those below, have recognized that *Hodari D.*'s aside does not constitute a binding holding. See *Brooks* v. *Gaenzle*, 614 F. 3d 1213, 1220–

1221 (CA10 2010); *Henson* v. *United States*, 55 A. 3d 859, 864–865 (D. C. 2012). Today's majority seems to accept the point too. It acknowledges that *Hodari D.* "principally concerned a show of authority." *Ante*, at 312. And it says it intends to rule for Ms. Torres "independently" of *Hodari D.* *Ante*, at 312.

III

Seeking to carry that burden, the majority picks up where *Hodari D.*'s dicta left off. It contends that an officer "seizes" a person by merely touching him with an "intent to restrain." *Ante*, at 317. We are told that a touch is a seizure even if the suspect never stops or slows down; it's a seizure even if he evades capture. In all the years before *Hodari D.*'s dicta, this conclusion would have sounded more than a little improbable to most lawyers and judges—as it should still today. A mere touch may be a battery. It may even be part of an attempted seizure. But the Fourth Amendment's text, its history, and our precedent all confirm that "seizing" something doesn't mean touching it; it means taking possession.

A

Start with the text. The Fourth Amendment guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." As at least part of *Hodari D.* recognized, "[f]rom the time of the founding to the present," the key term here—"seizure"—has always meant "'taking possession.'" 499 U. S., at 624.

Countless contemporary dictionaries define a "seizure" or the act of "seizing" in terms of possession.[1] This Court's

[1] N. Bailey, Universal Etymological English Dictionary (22 ed. 1770) (To seize is "to take into Custody or Possession by Force, or wrongfully; to distrain, to attack, to lay hold of, or catch"; a seizure is a "seizing, taking into Custody"); T. Dyche & W. Pardon, A New General English Dictionary (14th ed. 1771) (To seize is "to lay or take hold of violently or at unawares, wrongfully, or by force"; a seizing or seizure is "a taking possession of any

early cases reflect the same understanding. Just sixteen years after the Fourth Amendment's adoption, Congress passed a statute regulating the "seizure" of ships. See *The Josefa Segunda*, 10 Wheat. 312, 322 (1825). This Court interpreted the term to require "an open, visible possession claimed," so that those previously possessing the ship "understand that they are dispossessed, and that they are no longer at liberty to exercise any dominion on board of the ship." *Id.*, at 325. Nor did the Court's view change over time. In *Pelham* v. *Rose*, 9 Wall. 103, 106 (1870), the Court likewise explained that "[t]o effect [a] seizure" of something, one needed "to take" the thing "into his actual custody and control." *Id.*, at 107.

Today's majority disputes none of this. It accepts that a seizure of the inanimate objects mentioned in the Fourth Amendment (houses, papers, and effects) requires possession. *Ante*, at 312. And when it comes to persons, the majority agrees (as *Hodari D.* held) that a seizure in response to a "show of authority" takes place if and when the suspect submits to an officer's possession. *Ante*, at 322. The majority insists that a different rule should apply *only* in cases where an officer "touches" the suspect. Here—and here alone—possession is not required. So, under the majority's logic, we are quite literally asked to believe the officers in this case "seized" Ms. Torres's person, but *not* her car, when they shot both and both continued speeding down the highway.

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thing by violent, force, &c"); 2 S. Johnson, A Dictionary of the English Language (6th ed. 1785) (To seize is "1. To take hold of; to gripe; to grasp." "2. To take possession of by force." "3. To take possession of; to lay hold on; to invade suddenly." "4. To take forcible possession of by law." "5. To make possessed; to put in possession of." A seizure is "1. The act of seizing." "2. The thing seized." "3. The act of taking forcible possession." "4. Gripe; possession." "5. Catch"); 2 J. Ash, The New and Complete Dictionary of the English Language (2d ed. 1795) (To seize is "[t]o grasp, to lay hold on, to fasten on, to take possession of, to take possession by law"; a seizure is "[t]he act of seizing, a gripe, a catch; the act of taking possession by force of law; the thing seized, the thing possessed").

The majority's need to resort to such a schizophrenic reading of the word "seizure" should be a signal that something has gone seriously wrong. The Fourth Amendment's Search and Seizure Clause uses the word "seizures" once in connection with four objects (persons, houses, papers, and effects). The text thus suggests parity, not disparity, in meaning. It is close to canon that when a provision uses the same word multiple times, courts must give it the same meaning each time. *Ratzlaf* v. *United States*, 510 U. S. 135, 143 (1994). And it *is* canonical that courts cannot give a single word different meanings depending on the happenstance of "which object it is modifying." *Reno* v. *Bossier Parish School Bd.*, 528 U. S. 320, 329 (2000) ("[W]e refuse to adopt a construction that would attribute different meanings to the same phrase in the same sentence, depending on which object it is modifying"). To "[a]scrib[e] various meanings" to a single word, we have observed, is to "render meaning so malleable" that written laws risk "becom[ing] susceptible to individuated interpretation." *Ratzlaf*, 510 U. S., at 143 (internal quotation marks omitted). The majority's conclusion that a single use of the word "seizures" bears two different meanings at the same time—indeed, in this very case—is truly novel. And when it comes to construing the Constitution, that kind of innovation is no virtue.

If more textual evidence were needed, the Fourth Amendment's neighboring Warrant Clause would seem to provide it. That Clause states that warrants must describe "the persons or things to be seized." Once more, the Amendment uses the same verb—"seized"—for both persons and objects. Once more, it suggests parity, not some hidden divergence between people and their possessions. Nor does anyone dispute that a warrant for the "seizure" of a person means a warrant authorizing officers to take that person into their *possession*.

Against all these adverse textual clues, the majority offers little in reply. It *admits* that its interpretation defies this

Court's teachings in *Ratzlaf* and *Reno* by ascribing different meanings to the word "seizure" depending on "the object being seized." *Ante*, at 324. It says only that we should overlook the problem because "our cases" in the Fourth Amendment context compel this remarkable construction. *Ibid.* But it is unclear what cases the majority might have in mind for it cites none.

Instead, the majority proceeds to reason that the word "seizure" *must* carry a different meaning for persons and objects because persons alone are "capable of fleeing" and have "an interest in doing so." *Ibid.* But that reasoning faces trouble even from *Hodari D.*, which explained that "[a] ship still fleeing, even though under attack, would not be considered to have been seized as a war prize." 499 U. S., at 624. Of course, as the majority observes, persons alone can possess "an interest" in fleeing. But, as *Hodari D.*'s example shows, they can have as much (or more) interest in fleeing to prevent the seizure of their possessions as they do their persons. Even today, a suspect driving a car loaded with illegal drugs may be more interested in fleeing to avoid the loss of her valuable cargo than to prevent her own detention. Yet the majority offers no reasoned explanation why the meaning of the word "seizure" changes when officers hit the suspect and when they hit her drugs and car as all three speed away.

Unable to muster any precedent or sound reason for its reading, the majority finishes its textual analysis with a selective snippet from Webster's Dictionary and a hypothetical about a purse snatching. The majority notes that Webster equated a seizure with "'the act of taking by warrant'" or "'laying hold on suddenly.'" *Ante*, at 312. But Webster used the warrant definition to describe "the seizure of contraband goods"—a seizure the majority *agrees* requires possession. Meanwhile, the phrase "laying hold on" a person connotes physical possession, as a look at the dictionary's entire definition demonstrates. A "seizure," Webster con-

tinued, is the "act of taking possession by force," the "act of taking by warrant," "possession," and "a catching."[2] Read in full, Webster thus lends no support to the majority's view.

The purse hypothetical, borrowed from *Hodari D.*'s dicta, turns out to be even less illuminating. It supposes that "an ordinary user of the English language could remark: 'She seized the purse-snatcher, but he broke out of her grasp.'" *Ante*, at 312 (quoting *Hodari D.*, 499 U. S., at 626). But what does that prove? The hypothetical contemplates a woman who *takes possession* of the purse-snatcher, establishing a "grasp" for him to "break out of." One doesn't "break out of" a mere touch.

Really, the majority's answer to the Constitution's text is to ignore it. The majority stands mute before the consensus among founding-era dictionaries, this Court's early cases interpreting the word "seizure," and the Warrant Clause. It admits its interpretation spurns the canonical interpretive principle that a single word in a legal text does not change its meaning depending on what object it modifies. All we're offered is a curated snippet and an unhelpful hypothetical. Ultimately, it's hard not to wonder whether the majority says so little about the Constitution's terms because so little can be said that might support its ruling.

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[2] 2 N. Webster, An American Dictionary of the English Language 67 (1828) (To seize is "1. To fall or rush upon suddenly and lay hold on; or to gripe or grasp suddenly." "2. To take possession by force, with or without right." "3. To invade suddenly; to take hold of; to come upon suddenly; as, a fever *seizes* a patient." "4. To take possession by virtue of a warrant or legal authority." To be seized is to be "[s]uddenly caught or grasped; taken by force; invaded suddenly; taken possession of; fastened with a cord; having possession." A seizure is "1. The act of seizing; the act of laying hold on suddenly; as the *seizure* of a thief. 2. The act of taking possession by force; as the *seizure* of lands or goods; the *seizure* of a town by an enemy; the *seizure* of a throne by an usurper. 3. The act of taking by warrant; as the *seizure* of contraband goods. 4. The thing taken or seized." "5. Gripe; grasp; possession." "6. Catch; a catching").

B

Rather than focus on text, the majority turns quickly to history. At common law, it insists, a "linkage" existed between the "seizure" of a person and the concept of an "arrest." *Ante*, at 312. Thus, the majority contends, we must examine how the common law defined *that* term. But following the majority down this path only leads to another dead end. Unsurprisingly, an "arrest" at common law ordinarily required possession too.

1

Consider what some of our usual common law guides say on the subject. Blackstone defined "an arrest" in the criminal context as "the apprehending or restraining of one's person, in order to be forthcoming to answer an alleged or suspected crime." 4 Commentaries on the Laws of England 286 (1769). Hale and Hawkins both equated an "arrest" with "apprehending," "taking," and "detain[ing]" a person. See 1 M. Hale, Pleas of the Crown 89, 93–94 (5th ed. 1716); 2 W. Hawkins, Pleas of the Crown 74–75, 77, 80–81, 86 (3d ed. 1739). And Hawkins stated that an arrest required the officer to "actually have" the suspect "in his Custody." *Id.*, at 129. Any number of historical dictionaries attest to a similar understanding—defining an "arrest" as a "stop," a "taking of a person," and the act "by which a man becomes a prisoner."[3]

[3] See, *e. g.*, Bailey, Universal Etymological English Dictionary (To arrest is "to stop or stay"; an arrest (in the legal sense) is "a Legal taking of a Person, and restraining him from Liberty"); Dyche & Pardon, A New General English Dictionary (An arrest is "the stopping or detaining a person, by a legal process"); 1 Johnson, A Dictionary of the English Language ("1. In law. A stop or stay; as, a man apprehended for debt, is said to be arrested." "An arrest is a certain restraint of a man's person, depriving him of his own will, and binding it to become obedient to the will of the law, and may be called the beginning of imprisonment." "2. Any caption, seizure of the person." "3. A stop" (emphasis deleted)); 1 Ash, The New and Complete Dictionary of the English Language (To arrest is "[t]o seize

Common law causes of action point to the same commonsense conclusion. During the founding era, an individual who was unlawfully arrested could seek redress through the tort of false imprisonment. See 3 W. Blackstone, Commentaries on the Laws of England 127 (1768); see also *Payton* v. *New York*, 445 U. S. 573, 592 (1980); *Wallace* v. *Kato*, 549 U. S. 384, 388–389 (2007) (describing "false arrest and false imprisonment" as the "closest analogy" to an arrest without probable cause). That cause of action aimed to remedy "the violation of the right of personal liberty," 3 Blackstone, *supra*, at 127, which was "the power of loco-motion, of changing situation, or removing one's person to whatsoever place one's own inclination may direct," 1 W. Blackstone, Commentaries on the Laws of England 130 (1765). Thus, false imprisonment—the violation of the right to move where one desired—required proof of "[t]he detention of the person" and "[t]he unlawfulness of such detention." 3 Blackstone, *supra*, at 127. That detention could occur "in a gaol, house, stocks, or in the street," but it occurred only if a person was "*under the custody* of another." 1 E. East, Pleas of the Crown 428 (1806) (emphasis added).

Much the same held true in another related field. At common law, an officer could be held criminally liable for allowing an individual to escape after being arrested. And to prove the existence of an arrest in an "Indictment for an Escape," a prosecutor had to "expressly shew" that "the Party was actually in the *Defendant's Custody* for a Crime, Action, or Commitment for it." 2 Hawkins, *supra*, at 132 (emphasis added). In other words, to demonstrate an arrest, a prosecutor had to prove the suspect had been "a Prisoner *in [the officer's] Custody.*" 1 Hale, *supra*, at 112 (emphasis added). Here, too, an arrest required possession.

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a man for debt, to apprehend by virtue of a writ from any court of justice, to stop, to hinder"; an arrest is "[t]he act of seizing on a man's person for debt, the execution of a writ from any court of justice by which a man becomes a prisoner, a stop, a hindrance").

Once more, the majority's primary answer to all this countervailing evidence is to ignore it. And once more, the majority's own sources do more to hurt than help its cause. Lifting a line from *Simpson* v. *Hill*, 1 Esp. 431, 170 Eng. Rep. 409 (N. P. 1795), the majority suggests that the tort of false imprisonment at common law required no more than a "tapping on the shoulder." *Ante*, at 320 (citing 1 Esp., at 431–432, 170 Eng. Rep., at 409). But *Simpson* could not have stated the possession requirement more plainly: "[W]ithout any *taking possession* of the person," there "is not, by law, a false imprisonment." *Id.*, at 432, 170 Eng. Rep., at 409 (emphasis added). And the court proceeded to *reject* the plaintiff's claim for false imprisonment because the "constable did never take her *into custody*." *Ibid.* (emphasis added). The majority offers no case finding the elements of false imprisonment satisfied by the mere touch of a fleeing person.

What remains of the majority's response follows the same course. The majority asserts that claims for escape only required proof that the officer touched a suspect. *Ante*, at 320. But to prove its point, the majority quotes a sentence from Hale stating that *no* liability for escape exists "'if the felon were not once in the hands of an officer.'" *Ibid.* (quoting 2 Pleas of the Crown 93 (1736)). And as Hale proceeded to make plain, a felon "in the hands of an officer" was another way of saying the officer had "apprehended" or "taken" the felon into his "custody." See *id.*, at 89, 93–94 (5th ed. 1716).

Ultimately, the majority seeks to invoke Samuel Johnson's dictionary and *Payton*, 445 U. S., at 585, to confirm only the anodyne point that some sort of "linkage" existed at common law between the concepts of "arrests" and "seizures." *Ante*, at 312. Yet, even here it turns out there is more to the story. The majority neglects to mention that Johnson proceeded to define an "arrest" as a "caption" of the person, "a stop or stay," a "restraint of a man's person, depriving him of his own will," and "the beginning of imprisonment." 1 S. John-

son, A Dictionary of the English Language (6th ed. 1785). "To arrest," Johnson said, was "[t]o seize," "to detain by power," "[t]o withhold; to hinder," and "[t]o stop motion." *Ibid.* Meanwhile, the sentence fragment the majority quotes from *Payton* turns out to have originated in Justice Powell's concurrence in *United States* v. *Watson*, 423 U. S. 411, 428 (1976). And looking to that sentence in full, it is plain Justice Powell, too, understood an arrest not as a touching, but as "the taking hold of one's person." *Ibid.* Thus, even the majority's best sources only wind up pointing us back to the traditional possession rule.

2

Unable to identify anything helpful in the main current of the common law, the majority is forced to retreat to an obscure eddy. Starting from *Hodari D.*'s three references to "mere touch" arrests, the majority traces these authorities back to their English origins. The tale that unfolds is a curious one.

Before bankruptcy reforms in the 19th century, creditors seeking to induce repayment of their loans could employ bailiffs to civilly arrest delinquent debtors and haul them off to debtors prison. See Cohen, The History of Imprisonment for Debt and Its Relation to the Development of Discharge in Bankruptcy, 3 J. Legal Hist. 153, 154–155 (1982). But the common law also offered debtors some tools to avoid or delay that fate. Relevant here, the common law treated the home as a "castle of defence and asylum" so no bailiff could break into a debtor's home to effect a civil arrest. 3 Blackstone, *supra*, at 288; see also Treiman, Escaping the Creditor in the Middle Ages, 43 L. Q. Rev. 230, 233 (1927). Over time, the practice of "keeping house" became an increasingly popular way for debtors to evade the bailiff. *Id.*, at 234. Naturally, too, creditors railed against this "notorious" practice. See *ibid.* And eventually Parliament responded to their clamor. The English bankruptcy statutes of 1542 and 1570 imposed

serious penalties on debtors who "kept house" to avoid imprisonment. Cohen, *supra*, at 157.

It was seemingly against this backdrop that the strange cases *Hodari D.*'s dicta briefly alluded to and the majority has now dug up began to appear. Under their terms, a bailiff who could manage to touch a person hiding in his home, often through an open window or door, was deemed to have effected a civil "arrest." See *Genner* v. *Sparks*, 6 Mod. 173, 87 Eng. Rep. 928 (K. B. 1704). And because this mere touch was deemed an "arrest," the bailiff was then permitted by law to proceed to "br[eak] the house . . . to seize upon" the person and render him to prison. *Ibid.*, 87 Eng. Rep., at 929. Of course it was farcical to call a tap through an open window an "arrest." But it proved a useful farce, at least for creditors.

One of the majority's lead cases, *Sandon* v. *Jervis*, El. Bl. & El. 935, 120 Eng. Rep. 758 (K. B. 1858), illustrates the absurdity of it all. There, a bailiff tried and failed "on several occasions" to arrest a debtor. *Id.*, at 936, 120 Eng. Rep., at 758. Eventually, the bailiff spotted an open window on "an upper story," so he ordered an assistant to fetch a ladder. *Ibid.* But the debtor and his daughter noticed the ploy and "ran to the window," slamming it closed. *Ibid.* Unfortunately, in the excitement a window pane broke. Seeing the opportunity, the bailiff's assistant, while perched atop the ladder, thrust his hand through the opening and managed to touch the debtor. *Id.*, at 936–937, 120 Eng. Rep., at 758. According to the court, this "arrest" was sufficient to justify the bailiff's later forcible entry into the home. *Id.*, at 946–948, 120 Eng. Rep., at 762–763.

By everyone's account, however, the farce extended only so far. Yes, the mere-touch arrest was a feature of civil bankruptcy practice for an unfortunate period. But the majority has not identified a *single* founding-era case extending the mere-touch arrest rule to the criminal context. The majority points to two nineteenth-century treatises, but both

reference only a case about a debt-collection arrest. See *ante*, at 319 (citing 1 J. Backus, A Digest of Laws Relating to the Offices and Duties of Sheriff, Coroner and Constable 115–116, n. (c) (1812) (citing *Genner* v. *Sparks*, 6 Mod. 173, 87 Eng. Rep. 928 (K. B. 1704)), and 1 R. Burn, The Justice of the Peace 275 (28th ed. 1837) (citing the same)). The majority nods to dicta from an 1854 Delaware state trial court, but that came long after the founding and the majority does not explain how it sheds light on the Fourth Amendment's original meaning. See *ante*, at 319 (citing *State* v. *Townsend*, 5 Del. 487, 488)). And every remaining early American case the majority cites for its "mere touch" rule—from the founding through the Civil War—involved only civil debt-collection arrests. See *ante*, at 311 (citing *Whithead* v. *Keyes*, 85 Mass. 495 (1862)); *ante*, at 314 (citing *United States* v. *Benner*, 24 F. Cas. 1084 (No. 14,568) (CC ED Pa. 1830)); *ante*, at 314 (citing *Butler* v. *Washburn*, 25 N. H. 251 (1852) (tax collection)). The same goes for the majority's primary English authorities. See *ante*, at 314 (citing *Nicholl* v. *Darley*, 2 Y. & J. 399, 400, 148 Eng. Rep. 974 (Exch. 1828); *Sandon*, El. Bl. & El., at 940, 120 Eng. Rep., at 760)).

So what relevance do these obscure and long-abandoned civil debt-collection practices have for today's case concerning a criminal arrest and brought under the Fourth Amendment? The answer seems to be not much, for at least three reasons.

In the first place, the Amendment speaks of "seizures," not "arrests." To the extent the common law of arrests informs the Amendment's meaning, we have already seen that an arrest normally meant taking possession of an arrestee. Maybe in one peculiar area, and for less than admirable reasons, the common law deviated from this understanding. But this Court usually presumes that those who wrote the Constitution used words in their ordinary sense, not in some

idiosyncratic way. See *District of Columbia* v. *Heller*, 554 U. S. 570, 576 (2008). And today's majority supplies no evidence that anyone during the founding era understood the Fourth Amendment to adopt the specialized definition of "arrest" from civil debt-collection practice.

Second, even if we were to hypothesize that people *did* understand the Fourth Amendment to incorporate this quirky rule, what would that tell us? Here, the officers tried to arrest Ms. Torres in a parking lot on behalf of the State for serious crimes, not break into her home on behalf of the local credit union for missing a payment. So even if we were willing to suppose that the founding generation understood the Constitution to incorporate the majority's civil debt-collection arrest rule, nothing before us suggests they contemplated, let alone endorsed, injecting it into the criminal law and overriding settled doctrine equating arrests with possession.

Finally, even in the civil debt-collection context, the majority cannot point to even a single case suggesting that hitting a suspect with an object—an arrow, a bullet, a cudgel, *anything*—as she flees amounted to an arrest. Instead, the majority's cases hold only that the "laying of hands" on an arrestee constituted an arrest. *Ante*, at 313. Thus, even if the Fourth Amendment did transpose the "mere touch" rule from the context of civil arrests into the criminal arena, it *still* would not reach this case.

How does the majority respond? Again, it does little more than disregard the difficulties. The majority says there is "no reason to suspect" the common law defined criminal arrests of felons "any differently" than civil arrests of debtors. *Ante*, at 321, 319. But the majority skips over all the evidence canvassed above showing that a criminal arrest required possession, not a mere touch. See Part III–B–1, *supra*. It sails past its failure to identify *any* case holding that a mere touch qualified as a criminal arrest. It ignores

the fact Blackstone defined criminal and civil arrests differently.[4] And it claims to find support in Hawkins's statement that an officer could break into a house to capture an arrestee who escaped after being " 'lawfully arrested for *any* Cause.' " *Ante*, at 321 (quoting 2 Pleas of the Crown 87 (1721)). Yet, the question before us isn't what an officer might do *after* making an arrest; it's what constitutes an arrest *in the first place.*

Rather than confront shortcomings like these, the majority asks us to glide past them. It suggests that importing the mere-touch rule into the criminal context is permissible because "no common law case" had occasion to reject that idea expressly. See *ante*, at 323–324. But this gets things backwards. Today, for the first time, the majority seeks to equate seizures and criminal arrests with mere touches, attempted seizures, and batteries. It is for *the majority* to show the Fourth Amendment commands this result. No amount of rhetorical maneuvering can obscure how flat it has fallen. Even its own authorities do more to undermine than support its thesis. If common law courts never contemplated the majority's odd definition of a criminal arrest—and this Court didn't either for more than two centuries—that can only be further proof of its implausibility.

The majority asks us to glide past another problem too. It acknowledges that its debt-collection cases required a "laying on of hands" to complete an arrest. But it says we should overlook that rule as an accident of antiquity. "Touchings" by "firearm," we are told, were unknown to

[4] The majority cites only Blackstone's definition of a civil arrest, which required a "corporal seising or touching the defendant's body." *Ante*, at 314 (quoting 3 W. Blackstone, Commentaries on the Laws of England 288 (1768)). But flipping from Blackstone's third volume (discussing "private wrongs") to his fourth volume (discussing "public wrongs") reveals—as we have already seen but the majority fails to acknowledge—that Blackstone equated a criminal arrest with "apprehending or restraining . . . one's person, in order to be forthcoming to answer an alleged or suspected crime." See *supra*, at 335.

"founding-era courts," and no "officer used a gun to apprehend a suspect" before 1850. *Ante*, at 316. Never mind the shot heard round the world in 1775 and the adoption of the Second Amendment. Never mind that as early as 1592, when a bailiff "feared resistance" and thus "brought with him" a gun "to arrest" someone, a common law court deemed it lawful because "[t]he sheriff or any of his ministers may for the better execution of justice carry with them offensive or defensive weapons." *Seint John's Case*, 5 Co. Rep. 71b, 77 Eng. Rep. 162, 162–163 (K. B. 1592). Never mind that even tax collectors were carrying guns by the 1680s. *E. g.*, *Dickenson* v. *Watson*, Jones, T. 205, 205–206, 84 Eng. Rep. 1218, 1218–1219 (K. B. 1682). And never mind, too, that the majority's problem isn't limited to guns. It fails to cite any case in which a touching by *any* weapon was deemed sufficient to effect an arrest. Seemingly, the majority would have us believe that bailiffs wielding anything but their fists were beyond the framers' imagination.

Faced with all these problems, the majority tacks. It scrambles to locate a case—any case—suggesting that common law courts considered "touchings" by weapon enough to effect an arrest in the debt-collection context. Ultimately, the majority asks us to dwell at length on the Countess of Rutland's case. In at least that lone instance, the majority promises, we will find bailiffs who arrested a debtor by touching her with an object (a mace) rather than a laying on of hands. See *ante*, at 315 (citing *Countess of Rutland's Case*, 6 Co. Rep. 52b, 54a, 77 Eng. Rep. 332 (Star Chamber 1605)). But it turns out the dispute concerned whether a countess could be civilly arrested *at all*, not when or how the arrest was completed. The court had no reason to (and did not) decide whether the bailiffs accomplished their arrest when they "shewed her their mace," "touch[ed]" her with the mace, or "compelled the coachman to carry" her to jail. *Id.*, at 54a, 77 Eng. Rep., at 336. And no one questions that these things together—a show of authority followed by com-

pelled detention—have always been enough to complete an arrest. Not even minor royalty can rescue the majority.

So the majority tacks again. Now it asks us to dispense with the common law's "laying on of hands" requirement as an "artificial" rule. *Ante*, at 316. Distinguishing between "touchings" by hand and by weapon, it says, "calls to mind the unavailing defense of the person who 'persistently denied that he had laid hands upon a priest, for he had only cudgelled and kicked him.'" *Ibid.* But the quip exposes the majority's bind. To get where it wishes to go, the majority not only must rework the rules found in the cases on which it relies, it must also abandon their rationale. The debt-collection cases treated the "laying on of hands" as a sign of *possession*.[5] Maybe the possession was more "constructive" or even fictional than "actual." See *ante*, at 323. But the idea was that someone who stood next to a debtor and laid hands on him could theoretically exercise a degree of control over his person. Common law courts never said the same of bailiffs who fired arrows at debtors, shot them with firearms, or cudgeled them as they ran away. Such conduct might have amounted to a *battery*, but it was never deemed sufficient to constitute an *arrest*. Doubtless that's why when a tax collector shot a man in the eye with a (supposedly unavailable) firearm in 1682, the man sued the officer for "assault, battery, and wounding"—*not* false imprisonment. See *Dickenson*, Jones, T., at 205, 84 Eng. Rep., at 1218–1219.

[5] That is why the mere-touch cases often discussed the "corporal possession of the debtor." *E. g.*, *Sandon* v. *Jervis*, El. Bl. & El. 935, 941–942, 120 Eng. Rep. 758 (K. B. 1858) (Hill, J.). A "corporal" touch was a legal term of art and was frequently used in the context of determining the possession of goods. *E. g.*, *Jordan* v. *James*, 5 Ohio 88, 98 (1831) (stating that an owner "may deliver any chattel he sells, symbolically and constructively, as well as by corporal touch"); see also 2 W. Blackstone, Commentaries on the Laws 448–449, n. 16 (J. Chitty ed. 1826); Friedman, Formative Elements in the Law of Sales: The Eighteenth Century, 44 Minn. L. Rev. 411, 445 (1960).

The majority implores us to study the common law history of arrests. But almost immediately, the majority realizes it cannot find what it seeks in the history of criminal arrests. So it is forced to disinter a long-abandoned mere-touch rule from civil bankruptcy practice. Then it must import that rule into the criminal law. And because even that isn't enough to do the work it wishes done, the majority must jettison both the laying on of hands requirement and the rationale that sustained it. All of which leaves us confusing seizures with their attempts and arrests with batteries.

The common law offers a vast legal library. Like any other, it must be used thoughtfully. We have no business wandering about and randomly grabbing volumes off the shelf, plucking out passages we like, scratching out bits we don't, all before pasting our own new pastiche into the U. S. Reports. That does not respect legal history; it rewrites it.

C

If text and history pose challenges for the majority, so do this Court's precedents. The majority admits (as it must) that the seizure of an object occurs only through taking possession. *Ante*, at 311–312. The majority also admits (as it must) that the seizure of a person through a "show of authority" occurs only if the suspect submits to an officer's possession. *Ante*, at 322. But the majority fails to acknowledge that this Court has *also* said the same principle governs the seizure of persons effected through the use of force.

In *Terry* v. *Ohio*, 392 U. S. 1 (1968), the Court explained that "*[o]nly* when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Id.*, at 19, n. 16 (emphasis added). The restraint of liberty *Terry* referred to was "interference" with a person's "freedom of movement." *United States* v. *Jacobsen*, 466 U. S. 109, 113, n. 5 (1984). As the Court put it in *Brower* v. *County of Inyo*, 489 U. S. 593 (1989), a decision issued just

two years before *Hodari D.*: "It is clear, in other words, that a Fourth Amendment seizure" occurs "only when there is a governmental termination of freedom of movement through means intentionally applied." 489 U. S., at 597 (emphasis deleted).

Rather than follow these teachings, the majority disparages them. After highlighting (multiple times) that Justice Scalia authored *Hodari D.*'s dicta, the majority turns about and faults his opinion for the Court in *Brower* for "improperly eras[ing] the distinction between seizures by *control* and seizures by *force*." *Ante*, at 322. The majority continues on to blame other of our decisions, too, for "hav[ing] not always been attentive" to this supposedly fundamental distinction. *Ibid.* But this Court has not been "[in]attentive" to a fundamental Fourth Amendment distinction for over two centuries, let alone sought to "erase" it. In truth, the majority's "distinction" is a product of its own invention. This Court has always recognized that *how* seizures take place can differ. Some may take place after a show of authority, others by the application of force, still others after a polite request. But to *be* a "seizure," the same result has always been required: An officer must acquire possession.

IV

If text, history, and precedent cannot explain today's result, what can? The majority seems to offer a clue when it promises its new rule will help us "avoi[d] . . . line-drawing problems." *Ante*, at 323 (internal quotation marks omitted). Any different standard, the majority worries, would be "difficult to apply." *Ante*, at 322.

But if efficiency in judicial administration is the explanation, it is a troubling one. Surely our role as interpreters of the Constitution isn't to make life easier for ourselves. Cf. Calabresi & Lawson, The Rule of Law as a Law of Law, 90 Notre Dame L. Rev. 483, 488 (2014). Nor, for that matter, has the majority even tried to show that the traditional pos-

session rule—in use "[f]rom the time of the founding," *Hodari D.*, 499 U. S., at 624—has proven unreasonably difficult to administer. Everyone agrees, too, that the possession rule will continue to govern when it comes to the seizures of objects and persons through a show of authority. So, rather than simplify things, the majority's new rule for "mere touch" seizures promises only to add another layer of complexity to the law.

Even within its field of operation, the majority's rule seems destined to underdeliver on its predicted efficiencies. The majority tells us that its new test requires an "objective intent to restrain." *Ante*, at 317. But what qualifies is far from clear. The majority assures us that a "tap on the shoulder to get one's attention will rarely exhibit such an intent." *Ibid.* Suppose, though, the circumstances "objectively" indicate that the tap was "intended" to secure a person's attention for a minute, a quarter hour, or longer. Would that be enough?

Then there's the question what kind of "touching" will suffice. Imagine that, with an objective intent to detain a suspect, officers deploy pepper spray that enters a suspect's lungs as he sprints away. Does the application of the pepper spray count? Suppose that, intending to capture a fleeing suspect, officers detonate flash-bang grenades that are so loud they damage the suspect's eardrum, even though he manages to run off. Or imagine an officer shines a laser into a suspect's eyes to get him to stop, but the suspect is able to drive away with now-damaged retinas. Are these "touchings"? What about an officer's bullet that shatters the driver's windshield, a piece of which cuts her as she speeds away? Maybe the officer didn't touch the suspect, but he set in motion a series of events that yielded a touching. Does that count? While assuring us that its new rule will prove easy to administer, the majority refuses to confront its certain complications. Lower courts and law enforcement won't have that luxury.

If efficiency cannot explain today's decision, what's left? Maybe it is an impulse that individuals like Ms. Torres *should* be able to sue for damages. Sometimes police shootings are justified, but other times they cry out for a remedy. The majority seems to give voice to this sentiment when it disparages the traditional possession rule as "artificial" and promotes its alternative as more sensitive to "personal security" and "new" policing realities. *Ante*, at 316–317. It takes pains to explain, too, that its new rule will provide greater protection for personal "privacy" interests, which we're told make up the "essence" of the Fourth Amendment. *Ante*, at 324 (internal quotation marks omitted).

But tasked only with applying the Constitution's terms, we have no authority to posit penumbras of "privacy" and "personal security" and devise whatever rules we think might best serve the Amendment's "essence." The Fourth Amendment allows this Court to protect against specific governmental actions—unreasonable searches and seizures of persons, houses, papers, and effects—and that is the limit of our license. Besides, it's hard to see why we should stretch to invent a new remedy here. Ms. Torres had ready-made claims for assault and battery under New Mexico law to test the officers' actions. See N. M. Stat. Ann § 41–4–12 (2020). The only reason this case comes before us under § 1983 and the Fourth Amendment rather than before a New Mexico court under state tort law seems to be that Ms. Torres (or her lawyers) missed the State's two-year statutory filing deadline. See Tr. of Oral Arg. 16–17; Brief for Respondents 20, n. 4. That may be a misfortune for her, but it is hardly a reason to upend a 230 year-old understanding of our Constitution.

Nor, if we are honest, does today's decision promise much help to anyone else. Like Ms. Torres, many seeking to sue officers will be able to bring state tort claims. Even for those whose only recourse is a federal lawsuit, the majority's new rule seems likely to accomplish little. This Court has

already said that a remedy lies under § 1983 and the Fourteenth Amendment for police conduct that "shocks the conscience." *County of Sacramento* v. *Lewis*, 523 U. S. 833, 840, 845–847 (1998). At the same time, qualified immunity poses a daunting hurdle for those seeking to recover for less egregious police behavior. In our own case, Ms. Torres has yet to clear that bar and still faces it on remand. So, at the end of it all, the majority's new rule will help only those who (1) lack a state-law remedy, (2) evade custody, (3) after some physical contact by the police, (4) where the contact was sufficient to show an objective intent to restrain, (5) and where the police acted "unreasonably" in light of clearly established law, (6) but the police conduct was *not* "conscience shocking." With qualification heaped on qualification, that can describe only a vanishingly small number of cases.

Even if its holding offers little practical assistance to anyone, perhaps the majority at least hopes to be seen as trying to vindicate "personal security" and the "essence" of "privacy" when it derides the traditional possession rule as "artificial." But an attractive narrative cannot obscure the hard truth. Not only does the majority's "mere touch" rule allow a new cause of action in exceedingly few cases (nonconscience-shocking-but-still-unreasonable batteries intended to result in possession that don't achieve it). It supplies no path to relief for otherwise identical near-misses (assaults). A fleeing suspect briefly touched by pursuing officers may have a claim. But a suspect who evades a hail of bullets unscathed, or one who endures a series of flash-bang grenades untouched, is out of luck. That distinction is no less "artificial" than the one the law has recognized for centuries. And the majority's new rule promises such scarce relief that it can hardly claim more sensitivity to "personal security" than the rule the Constitution has long enshrined.

In the face of these concerns, the majority replies by denying their relevance. It says there is "no call" to "surmise" that its decision rests on anything beyond an "analysis of

the common law of arrest." *Ante*, at 324. But there is no surmise about it. The majority itself tells us that its decision is *also* justified by the need to "avoi[d] . . . line-drawing problems," protect "personal security," and advance the "privacy" interests that form the "essence" of the Fourth Amendment. Having invoked these sundry considerations, it's hard to see how the majority might disown them.

* * *

To rule as it does, the majority must endow the term "seizure" with two different meanings at the same time. It must disregard the dominant rule of the common law. It must disparage this Court's existing case law for erasing distinctions that never existed. It cannot even guarantee that its new rule will offer great efficiencies or meaningfully vindicate the penumbral promises it supposes. Instead, we are asked to skip from one snippet to another, finally landing on a long-abandoned debt-collection practice that must be reengineered to do the work the majority wishes done. Our final destination confuses a battery for a seizure and an attempted seizure with its completion. All this is miles from where the standard principles of interpretation lead and just as far from the Constitution's original meaning. And for what? A new rule that may seem tempting at first blush, but that offers those like Ms. Torres little more than false hope in the end.

Respectfully, I dissent.

Syllabus

FORD MOTOR CO. *v.* MONTANA EIGHTH JUDICIAL DISTRICT COURT ET AL.

CERTIORARI TO THE SUPREME COURT OF MONTANA

No. 19–368. Argued October 7, 2020—Decided March 25, 2021*

Ford Motor Company is a global auto company, incorporated in Delaware and headquartered in Michigan. Ford markets, sells, and services its products across the United States and overseas. The company also encourages a resale market for its vehicles. In each of these two cases, a state court exercised jurisdiction over Ford in a products-liability suit stemming from a car accident that injured a resident in the State. The first suit alleged that a 1996 Ford Explorer had malfunctioned, killing Markkaya Gullett near her home in Montana. In the second suit, Adam Bandemer claimed that he was injured in a collision on a Minnesota road involving a defective 1994 Crown Victoria. Ford moved to dismiss both suits for lack of personal jurisdiction. It argued that each state court had jurisdiction only if the company's conduct in the State had given rise to the plaintiff's claims. And that causal link existed, according to Ford, only if the company had designed, manufactured, or sold in the State the particular vehicle involved in the accident. In neither suit could the plaintiff make that showing. The vehicles were designed and manufactured elsewhere, and the company had originally sold the cars at issue outside the forum States. Only later resales and relocations by consumers had brought the vehicles to Montana and Minnesota. Both States' supreme courts rejected Ford's argument. Each held that the company's activities in the State had the needed connection to the plaintiff's allegations that a defective Ford caused in-state injury.

Held: The connection between the plaintiffs' claims and Ford's activities in the forum States is close enough to support specific jurisdiction. Pp. 358–371.

(a) The Fourteenth Amendment's Due Process Clause limits a state court's power to exercise jurisdiction over a defendant. The canonical decision in this area remains *International Shoe Co.* v. *Washington*, 326 U. S. 310. There, the Court held that a tribunal's authority depends on the defendant's having such "contacts" with the forum State that "the maintenance of the suit" is "reasonable" and "does not offend traditional notions of fair play and substantial justice." *Id.*, at 316–317. In apply-

*Together with No. 19–369, *Ford Motor Co.* v. *Bandemer*, on certiorari to the Supreme Court of Minnesota.

ing that formulation, the Court has long focused on the nature and extent of "the defendant's relationship to the forum State." *Bristol-Myers Squibb Co.* v. *Superior Court of Cal., San Francisco Cty.*, 582 U. S. 255, 262. That focus has led to the recognition of two types of personal jurisdiction: general and specific jurisdiction. A state court may exercise general jurisdiction only when a defendant is "essentially at home" in the State. *Goodyear Dunlop Tires Operations, S. A* v. *Brown*, 564 U. S 915, 919. Specific jurisdiction covers defendants less intimately connected with a State, but only as to a narrower class of claims. To be subject to that kind of jurisdiction, the defendant must take "some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State." *Hanson* v. *Denckla*, 357 U. S. 235, 253. And the plaintiff's claims "must arise out of or relate to the defendant's contacts" with the forum. *Bristol-Myers*, 582 U. S., at 262. Pp. 358–360.

(b) Ford admits that it has "purposefully avail[ed] itself of the privilege of conducting activities" in both States. *Hanson*, 357 U. S., at 253. The company's claim is instead that those activities are insufficiently connected to the suits. In Ford's view, due process requires a causal link locating jurisdiction only in the State where Ford sold the car in question, or the States where Ford designed and manufactured the vehicle. And because none of these things occurred in Montana or Minnesota, those States' courts have no power over these cases.

Ford's causation-only approach finds no support in this Court's requirement of a "connection" between a plaintiff's suit and a defendant's activities. *Bristol-Myers*, 582 U. S., at 265. The most common formulation of that rule demands that the suit "arise out of or relate to the defendant's contacts with the forum." *Id.*, at 262. The second half of that formulation, following the word "or," extends beyond causality. So the inquiry is not over if a causal test would put jurisdiction elsewhere. Another State's courts may yet have jurisdiction, because of a non-causal "affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence involving the defendant that takes place within the State's borders." *Ibid.*

And this Court has stated that specific jurisdiction attaches in cases identical to this one—when a company cultivates a market for a product in the forum State and the product malfunctions there. See *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U. S. 286. Here, Ford advertises and markets its vehicles in Montana and Minnesota, including the two models that allegedly malfunctioned in those States. Apart from sales, the company works hard to foster ongoing connections to its cars' owners. All this Montana- and Minnesota-based conduct relates to the claims in these cases, brought by state residents in the States' courts. Put slightly differently, because Ford had systematically served a mar-

ket in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States, there is a strong "relationship among the defendant, the forum, and the litigation"—the "essential foundation" of specific jurisdiction. *Helicopteros Nacionales de Colombia, S. A.* v. *Hall*, 466 U. S. 408, 414. Allowing jurisdiction in these circumstances both treats Ford fairly and serves principles of "interstate federalism." *World-Wide Volkswagen*, 444 U. S., 293. Pp. 361–369.

(c) *Bristol-Myers* and *Walden* v. *Fiore*, 571 U. S. 277, reinforce all that the Court has said about why Montana's and Minnesota's courts may decide these cases. In *Bristol-Myers*, the Court found jurisdiction improper because the forum State, and the defendant's activities there, lacked any connection to the plaintiffs' claims. 582 U. S., at 265. That is not true of these cases, where the plaintiffs are residents of the forum States, used the allegedly defective products in the forum States, and suffered injuries when those products malfunctioned there. And *Walden* does not show, as Ford claims, that a plaintiff's residence and place of injury can never support jurisdiction. The defendant in *Walden* had never formed any contact with the forum State. Ford, by contrast, has a host of forum connections. The place of a plaintiff's injury and residence may be relevant in assessing the link between those connections and the plaintiff's suit. Pp. 369–371.

No. 19–368, 395 Mont. 478, 443 P. 3d 407, and No. 19–369, 931 N. W. 2d 744, affirmed.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and BREYER, SOTOMAYOR, and KAVANAUGH, JJ., joined. ALITO, J., filed an opinion concurring in the judgment, *post*, p. 372. GORSUCH, J., filed an opinion concurring in the judgment, in which THOMAS, J., joined, *post*, p. 375. BARRETT, J., took no part in the consideration or decision of the cases.

Sean Marotta argued the cause for petitioner in both cases. With him on the briefs were *Neal Kumar Katyal*, *Jessica L. Ellsworth*, *Kirti Datla*, *Mitchell P. Reich*, *Reedy C. Swanson*, *and Erin R. Chapman.*

Deepak Gupta argued the cause for respondents in both cases. With him on the brief were *Gregory A. Beck* and *Jennifer Bennett.*†

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†Briefs of *amici curiae* urging reversal in both cases were filed for the United States by *Solicitor General Francisco*, *Assistant Attorney General Hunt*, *Deputy Solicitor General Kneedler*, *Deputy Assistant Attor-*

JUSTICE KAGAN delivered the opinion of the Court.

In each of these two cases, a state court held that it had jurisdiction over Ford Motor Company in a products-liability suit stemming from a car accident. The accident happened in the State where suit was brought. The victim was one

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ney General Mooppan, Vivek Suri, Michael S. Raab, and *Joseph F. Busa*; for the Alliance for Automotive Innovation et al. by *Jaime A. Santos* and *Darryl M. Woo*; for the Chamber of Commerce of the United States of America et al. by *Andrew J. Pincus, Archis A. Parasharami, Daniel E. Jones,* and *Patrick Hedren*; for the Institute of International Bankers by *Elbert Lin*; for the Pharmaceutical Research and Manufacturers of America by *Virginia A. Seitz, Jonathan F. Cohn, Allan Rothman, James C. Stansel*, and *Melissa B. Kimmel*; for the Product Liability Advisory Council, Inc., by *David R. Geiger*; and for the Washington Legal Foundation by *Amanda K. Rice, Cory L. Andrews, Corbin K. Barthold,* and *Beth Heifetz.*

Briefs of *amici curiae* urging affirmance in both cases were filed for the State of Minnesota et al. by *Keith Ellison,* Attorney General of Minnesota, *Liz Kramer,* Solicitor General, *Jason Marisam,* Assistant Attorney General, *Pete Surdo,* Special Assistant Attorney General, *Ken Paxton,* Attorney General of Texas, *Jeffrey C. Mateer,* First Assistant Attorney General, *Kyle D. Hawkins,* Solicitor General, *Bill Davis,* Deputy Solicitor General, *Lisa A. Bennett,* Assistant Solicitor General, and *Abigail M. Frisch,* Assistant Attorney General, and by the Attorneys General for their respective jurisdictions as follows: *Steve Marshall* of Alabama, *Kevin G. Clarkson* of Alaska, *Leslie Rutledge* of Arkansas, *Xavier Becerra* of California, *Phil Weiser* of Colorado, *William Tong* of Connecticut, *Kathleen Jennings* of Delaware, *Karl A. Racine*, Attorney General of the District of Columbia, *Ashley Moody* of Florida, *Clare E. Connors* of Hawaii, *Lawrence G. Wasden* of Idaho, *Kwame Raoul* of Illinois, *Tom Miller* of Iowa, *Jeff Landry* of Louisiana, *Aaron M. Frey* of Maine, *Brian E. Frosh* of Maryland, *Maura Healey* of Massachusetts, *Dana Nessel* of Michigan, *Lynn Fitch* of Mississippi, *Timothy C. Fox* of Montana, *Douglas J. Peterson* of Nebraska, *Aaron D. Ford* of Nevada, *Gurbir S. Grewal* of New Jersey, *Hector Balderas* of New Mexico, *Joshua H. Stein* of North Carolina, *Wayne Stenehjem* of North Dakota, *Mike Hunter* of Oklahoma, *Ellen F. Rosenblum* of Oregon, *Josh Shapiro* of Pennsylvania, *Peter F. Neronha* of Rhode Island, *Alan Wilson* of South Carolina, *Jason Ravnsborg* of South Dakota, *Herbert H. Slatery III* of Tennessee, *Sean D. Reyes* of Utah, *Thomas J. Donovan, Jr.*, of Vermont, *Mark R. Herring* of Virginia, *Robert W. Ferguson* of Washington, and *Patrick Morrisey* of West Virginia; for the American

of the State's residents. And Ford did substantial business in the State—among other things, advertising, selling, and servicing the model of vehicle the suit claims is defective. Still, Ford contends that jurisdiction is improper because the particular car involved in the crash was not first sold in the forum State, nor was it designed or manufactured there. We reject that argument. When a company like Ford serves a market for a product in a State and that product causes injury in the State to one of its residents, the State's courts may entertain the resulting suit.

I

Ford is a global auto company. It is incorporated in Delaware and headquartered in Michigan. But its business is everywhere. Ford markets, sells, and services its products across the United States and overseas. In this country alone, the company annually distributes over 2.5 million new cars, trucks, and SUVs to over 3,200 licensed dealerships. See App. 70, 100. Ford also encourages a resale market for its products: Almost all its dealerships buy and sell used Fords, as well as selling new ones. To enhance its brand and increase its sales, Ford engages in wide-ranging promotional activities, including television, print, online, and direct-mail advertisements. No matter where you live, you've seen them: "Have you driven a Ford lately?" or "Built Ford Tough." Ford also ensures that consumers can keep their

Association for Justice et al. by *Robert S. Peck* and *Jeffrey R. White*; for Civil Procedure Professors by *Alan B. Morrison*; for Civil Procedure Professors by *Pamela K. Bookman* and *D. Theodore Rave*, both *pro se*; for the Foundation for Moral Law by *Martin Wishnatsky*; for Main Street Alliance by *Hassan A. Zavareei*; for the National Association of Home Builders by *Eric F. Citron*, *Daniel Woofter*, and *Erica Oleszczuk Evans*; for Professors of Civil Procedure and Federal Courts by *Linda Sandstrom Simard*; for Professors of Jurisdiction by *Vincent Levy* and *Gregory Dubinsky*; and for Jonathan R. Nash by *Jonathan R. Nash*, *pro se*.

Briefs of *amici curiae* were filed in both cases for the Center for Auto Safety by *Larry E. Coben* and *Jason Levine*; and for DRI-The Voice of the Defense Bar by *Lisa M. Baird*, *James C. Martin*, and *James M. Beck*.

vehicles running long past the date of sale. The company provides original parts to auto supply stores and repair shops across the country. (Goes another slogan: "Keep your Ford a Ford.") And Ford's own network of dealers offers an array of maintenance and repair services, thus fostering an ongoing relationship between Ford and its customers.

Accidents involving two of Ford's vehicles—a 1996 Explorer and a 1994 Crown Victoria—are at the heart of the suits before us. One case comes from Montana. Markkaya Gullett was driving her Explorer near her home in the State when the tread separated from a rear tire. The vehicle spun out, rolled into a ditch, and came to rest upside down. Gullett died at the scene of the crash. The representative of her estate sued Ford in Montana state court, bringing claims for a design defect, failure to warn, and negligence. The second case comes from Minnesota. Adam Bandemer was a passenger in his friend's Crown Victoria, traveling on a rural road in the State to a favorite ice-fishing spot. When his friend rear-ended a snowplow, this car too landed in a ditch. Bandemer's air bag failed to deploy, and he suffered serious brain damage. He sued Ford in Minnesota state court, asserting products-liability, negligence, and breach-of-warranty claims.

Ford moved to dismiss the two suits for lack of personal jurisdiction, on basically identical grounds. According to Ford, the state court (whether in Montana or Minnesota) had jurisdiction only if the company's conduct in the State had given rise to the plaintiff's claims. And that causal link existed, Ford continued, only if the company had designed, manufactured, or—most likely—sold in the State the particular vehicle involved in the accident.[1] In neither suit could the plaintiff make that showing. Ford had designed the Ex-

[1] Ford's Brief in Support of Motion to Dismiss in *Lucero* v. *Ford Motor Co.*, No. DV–18–247 (8th Jud. Dist., Cascade Cty., Mont.), pp. 14–15; Ford Motor Co.'s Memorandum in Support of Motion to Dismiss in No. 77–cv–16–1025 (7th Jud. Dist., Todd Cty., Minn.), pp. 11–12, and n. 3.

plorer and Crown Victoria in Michigan, and it had manufactured the cars in (respectively) Kentucky and Canada. Still more, the company had originally sold the cars at issue outside the forum States—the Explorer in Washington, the Crown Victoria in North Dakota. Only later resales and relocations by consumers had brought the vehicles to Montana and Minnesota. That meant, in Ford's view, that the courts of those States could not decide the suits.

Both the Montana and the Minnesota Supreme Courts (affirming lower court decisions) rejected Ford's argument. The Montana court began by detailing the varied ways Ford "purposefully" seeks to "serve the market in Montana." 395 Mont. 478, 488, 443 P. 3d 407, 414 (2019). The company advertises in the State; "has thirty-six dealerships" there; "sells automobiles, specifically Ford Explorers[,] and parts" to Montana residents; and provides them with "certified repair, replacement, and recall services." *Ibid.* Next, the court assessed the relationship between those activities and the Gullett suit. Ford's conduct, said the court, encourages "Montana residents to drive Ford vehicles." *Id.*, at 491, 443 P. 3d, at 416. When that driving causes in-state injury, the ensuing claims have enough of a tie to Ford's Montana activities to support jurisdiction. Whether Ford "designed, manufactured, or sold [the] vehicle" in the State, the court concluded, is "immaterial." *Ibid.* Minnesota's Supreme Court agreed. It highlighted how Ford's "marketing and advertisements" influenced state residents to "purchase and drive more Ford vehicles." 931 N. W. 2d 744, 754 (2019). Indeed, Ford had sold in Minnesota "more than 2,000 1994 Crown Victoria[s]"—the "very type of car" involved in Bandemer's suit. *Id.*, at 751, 754. That the "*particular vehicle*" injuring him was "designed, manufactured, [and first] sold" elsewhere made no difference. *Id.*, at 753 (emphasis in original). In the court's view, Ford's Minnesota activities still had the needed connection to Bandemer's allegations that a defective Crown Victoria caused in-state injury. See *id.*, at 754.

We granted certiorari to consider if Ford is subject to jurisdiction in these cases. 589 U. S. 1164 (2020). We hold that it is.

II

A

The Fourteenth Amendment's Due Process Clause limits a state court's power to exercise jurisdiction over a defendant. The canonical decision in this area remains *International Shoe Co.* v. *Washington*, 326 U. S. 310 (1945). There, the Court held that a tribunal's authority depends on the defendant's having such "contacts" with the forum State that "the maintenance of the suit" is "reasonable, in the context of our federal system of government," and "does not offend traditional notions of fair play and substantial justice." *Id.*, at 316–317 (internal quotation marks omitted). In giving content to that formulation, the Court has long focused on the nature and extent of "the defendant's relationship to the forum State." *Bristol-Myers Squibb Co.* v. *Superior Court of Cal., San Francisco Cty.*, 582 U. S. 255, 262 (2017) (citing cases). That focus led to our recognizing two kinds of personal jurisdiction: general (sometimes called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction. See *Goodyear Dunlop Tires Operations, S. A.* v. *Brown*, 564 U. S. 915, 919 (2011).

A state court may exercise general jurisdiction only when a defendant is "essentially at home" in the State. *Ibid.* General jurisdiction, as its name implies, extends to "any andall claims" brought against a defendant. *Ibid.* Those claims need not relate to the forum State or the defendant's activity there; they may concern events and conduct anywhere in the world. But that breadth imposes a correlative limit: Only a select "set of affiliations with a forum" will expose a defendant to such sweeping jurisdiction. *Daimler AG* v. *Bauman*, 571 U. S. 117, 137 (2014). In what we have called the "paradigm" case, an individual is subject to gen-

eral jurisdiction in her place of domicile. *Ibid.* (internal quotation marks omitted). And the "equivalent" forums for a corporation are its place of incorporation and principal place of business. *Ibid.* (internal quotation marks omitted); see *id.*, at 139, n. 19 (leaving open "the possibility that in an exceptional case" a corporation might also be "at home" elsewhere). So general jurisdiction over Ford (as all parties agree) attaches in Delaware and Michigan—not in Montana and Minnesota. See *supra*, at 355.

Specific jurisdiction is different: It covers defendants less intimately connected with a State, but only as to a narrower class of claims. The contacts needed for this kind of jurisdiction often go by the name "purposeful availment." *Burger King Corp.* v. *Rudzewicz*, 471 U. S. 462, 475 (1985). The defendant, we have said, must take "some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State." *Hanson* v. *Denckla*, 357 U. S. 235, 253 (1958). The contacts must be the defendant's own choice and not "random, isolated, or fortuitous." *Keeton* v. *Hustler Magazine, Inc.*, 465 U. S. 770, 774 (1984). They must show that the defendant deliberately "reached out beyond" its home—by, for example, "exploi[ting] a market" in the forum State or entering a contractual relationship centered there. *Walden* v. *Fiore*, 571 U. S. 277, 285 (2014) (internal quotation marks and alterations omitted). Yet even then—because the defendant is not "at home"—the forum State may exercise jurisdiction in only certain cases. The plaintiff's claims, we have often stated, "must arise out of or relate to the defendant's contacts" with the forum. *Bristol-Myers*, 582 U. S., at 262 (quoting *Daimler*, 571 U. S., at 127; alterations omitted); see, *e. g.*, *Burger King*, 471 U. S., at 472; *Helicopteros Nacionales de Colombia, S. A.* v. *Hall*, 466 U. S. 408, 414 (1984); *International Shoe*, 326 U. S., at 319. Or put just a bit differently, "there must be 'an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place

in the forum State and is therefore subject to the State's regulation.'" *Bristol-Myers*, 582 U. S., at 262, 264 (quoting *Goodyear*, 564 U. S., at 919).

These rules derive from and reflect two sets of values—treating defendants fairly and protecting "interstate federalism." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U. S. 286, 293 (1980); see *id.*, at 297–298. Our decision in *International Shoe* founded specific jurisdiction on an idea of reciprocity between a defendant and a State: When (but only when) a company "exercises the privilege of conducting activities within a state"—thus "enjoy[ing] the benefits and protection of [its] laws"—the State may hold the company to account for related misconduct. 326 U. S., at 319; see *Burger King*, 471 U. S., at 475–476. Later decisions have added that our doctrine similarly provides defendants with "fair warning"—knowledge that "a particular activity may subject [it] to the jurisdiction of a foreign sovereign." *Id.*, at 472 (internal quotation marks omitted); *World-Wide Volkswagen*, 444 U. S., at 297 (likewise referring to "clear notice"). A defendant can thus "structure [its] primary conduct" to lessen or avoid exposure to a given State's courts. *Id.*, at 297. And this Court has considered alongside defendants' interests those of the States in relation to each other. One State's "sovereign power to try" a suit, we have recognized, may prevent "sister States" from exercising their like authority. *Id.*, at 293. The law of specific jurisdiction thus seeks to ensure that States with "little legitimate interest" in a suit do not encroach on States more affected by the controversy. *Bristol-Myers*, 582 U. S., at 263.[2]

[2] One of the concurrences here expresses a worry that our *International Shoe*-based body of law is not "well suited for the way in which business is now conducted," and tentatively suggests a 21st-century rethinking. *Post*, at 372 (ALITO, J., concurring in judgment). Fair enough perhaps, see *infra*, at 366, n. 4, but the concurrence then acknowledges that these cases have no distinctively modern features, and it decides them on grounds that (as it agrees) are much the same as ours. See *post*, at 373–374; compare *ibid.* with *infra*, at 364–368. The other concurrence proposes instead a return to the mid-19th century—a replacement of our current

B

Ford contends that our jurisdictional rules prevent Montana's and Minnesota's courts from deciding these two suits. In making that argument, Ford does not contest that it does substantial business in Montana and Minnesota—that it actively seeks to serve the market for automobiles and related products in those States. See Brief for Petitioner 6, 9, 13. Or to put that concession in more doctrinal terms, Ford agrees that it has "purposefully avail[ed] itself of the privilege of conducting activities" in both places. *Hanson*, 357 U. S., at 253; see *supra*, at 359–360. Ford's claim is instead that those activities do not sufficiently connect to the suits, even though the resident-plaintiffs allege that Ford cars malfunctioned in the forum States. In Ford's view, the needed link must be causal in nature: Jurisdiction attaches "only if the defendant's forum conduct *gave rise* to the plaintiff's claims." Brief for Petitioner 13 (emphasis in original). And that rule reduces, Ford thinks, to locating specific jurisdiction in the State where Ford sold the car in question, or else the States where Ford designed and manufactured the vehicle. See *id.*, at 2; Reply Brief 2, 19; *supra*, at 356 (identifying those States). On that view, the place of accident and injury is immaterial. So (Ford says) Montana's and Minnesota's courts have no power over these cases.

But Ford's causation-only approach finds no support in this Court's requirement of a "connection" between a plaintiff's suit and a defendant's activities. *Bristol-Myers*, 582 U. S., at 265. That rule indeed serves to narrow the class of claims

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doctrine with the Fourteenth Amendment's original meaning respecting personal jurisdiction. *Post*, at 383–384 (GORSUCH, J., concurring in judgment). But that opinion never reveals just what the Due Process Clause as understood at its ratification required, and its ground for deciding these cases is correspondingly spare. *Post*, at 384. This opinion, by contrast, resolves these cases by proceeding as the Court has done for the last 75 years—applying the standards set out in *International Shoe* and its progeny, with attention to their underlying values of ensuring fairness and protecting interstate federalism.

over which a state court may exercise specific jurisdiction. But not quite so far as Ford wants. None of our precedents has suggested that only a strict causal relationship between the defendant's in-state activity and the litigation will do. As just noted, our most common formulation of the rule demands that the suit "arise out of *or relate to* the defendant's contacts with the forum." *Id.*, at 262 (quoting *Daimler*, 571 U. S., at 127; emphasis added; alterations omitted); see *supra*, at 359. The first half of that standard asks about causation; but the back half, after the "or," contemplates that some relationships will support jurisdiction without a causal showing. That does not mean anything goes. In the sphere of specific jurisdiction, the phrase "relate to" incorporates real limits, as it must to adequately protect defendants foreign to a forum. But again, we have never framed the specific jurisdiction inquiry as always requiring proof of causation—*i. e.*, proof that the plaintiff's claim came about because of the defendant's in-state conduct. See also *Bristol-Myers*, 582 U. S., at 262, 264 (quoting *Goodyear*, 564 U. S., at 919) (asking whether there is "an affiliation between the forum and the underlying controversy," without demanding that the inquiry focus on cause). So the case is not over even if, as Ford argues, a causal test would put jurisdiction in only the States of first sale, manufacture, and design. A different State's courts may yet have jurisdiction, because of another "activity [or] occurrence" involving the defendant that takes place in the State. *Bristol-Myers*, 582 U. S., at 262, 264 (quoting *Goodyear*, 564 U. S., at 919).[3]

[3] In thus reiterating this Court's longstanding approach, we reject JUSTICE GORSUCH's apparent (if oblique) view that a state court should have jurisdiction over a nationwide corporation like Ford on *any* claim, no matter how unrelated to the State or Ford's activities there. See *post*, at 384. On that view, for example, a California court could hear a claim against Ford brought by an Ohio plaintiff based on an accident occurring in Ohio involving a car purchased in Ohio. Removing the need for any connection between the case and forum State would transfigure our specific jurisdic-

And indeed, this Court has stated that specific jurisdiction attaches in cases identical to the ones here—when a company like Ford serves a market for a product in the forum State and the product malfunctions there. In *World-Wide Volkswagen*, the Court held that an Oklahoma court could not assert jurisdiction over a New York car dealer just because a car it sold later caught fire in Oklahoma. 444 U. S., at 295. But in so doing, we contrasted the dealer's position to that of two other defendants—Audi, the car's manufacturer, and Volkswagen, the car's nationwide importer (neither of which contested jurisdiction):

> "[I]f the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in [several or all] other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others." *Id.*, at 297.

Or said another way, if Audi and Volkswagen's business deliberately extended into Oklahoma (among other States), then Oklahoma's courts could hold the companies accountable for a car's catching fire there—even though the vehicle had been designed and made overseas and sold in New York. For, the Court explained, a company thus "purposefully avail[ing] itself" of the Oklahoma auto market "has clear notice" of its exposure in that State to suits arising from local accidents involving its cars. *Ibid.* And the company could do something about that exposure: It could "act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks

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tion standard as applied to corporations. "Case-linked" jurisdiction, see *supra*, at 359–360, would then become not case-linked at all.

are [still] too great, severing its connection with the State." *Ibid.*

Our conclusion in *World-Wide Volkswagen*—though, as Ford notes, technically "dicta," Brief for Petitioner 34—has appeared and reappeared in many cases since. So, for example, the Court in *Keeton* invoked that part of *World-Wide Volkswagen* to show that when a corporation has "continuously and deliberately exploited [a State's] market, it must reasonably anticipate being haled into [that State's] court[s]" to defend actions "based on" products causing injury there. 465 U. S., at 781 (citing 444 U. S., at 297–298); see *Burger King*, 471 U. S., at 472–473 (similarly citing *World-Wide Volkswagen*). On two other occasions, we reaffirmed that rule by reciting the above block-quoted language verbatim. See *Goodyear*, 564 U. S., at 927; *Asahi Metal Industry Co.* v. *Superior Court of Cal., Solano Cty.*, 480 U. S. 102, 110 (1987) (opinion of O'Connor, J.). And in *Daimler*, we used the Audi/Volkswagen scenario as a paradigm case of specific jurisdiction (though now naming Daimler, the maker of Mercedes Benzes). Said the Court, to "illustrate[ ]" specific jurisdiction's "province[ ]": A California court would exercise specific jurisdiction "if a California plaintiff, injured in a California accident involving a Daimler-manufactured vehicle, sued Daimler [in that court] alleging that the vehicle was defectively designed." 571 U. S., at 127, n. 5. As in *World-Wide Volkswagen*, the Court did not limit jurisdiction to where the car was designed, manufactured, or first sold. Substitute Ford for Daimler, Montana and Minnesota for California, and the Court's "illustrat[ive]" case becomes . . . the two cases before us.

To see why Ford is subject to jurisdiction in these cases (as Audi, Volkswagen, and Daimler were in their analogues), consider first the business that the company regularly conducts in Montana and Minnesota. See generally 395 Mont., at 488, 443 P. 3d, at 414; 931 N. W. 2d, at 748; *supra*, at 357.

Small wonder that Ford has here conceded "purposeful availment" of the two States' markets. See *supra*, at 361. By every means imaginable—among them, billboards, TV and radio spots, print ads, and direct mail—Ford urges Montanans and Minnesotans to buy its vehicles, including (at all relevant times) Explorers and Crown Victorias. Ford cars—again including those two models—are available for sale, whether new or used, throughout the States, at 36 dealerships in Montana and 84 in Minnesota. And apart from sales, Ford works hard to foster ongoing connections to its cars' owners. The company's dealers in Montana and Minnesota (as elsewhere) regularly maintain and repair Ford cars, including those whose warranties have long since expired. And the company distributes replacement parts both to its own dealers and to independent auto shops in the two States. Those activities, too, make Ford money. And by making it easier to own a Ford, they encourage Montanans and Minnesotans to become lifelong Ford drivers.

Now turn to how all this Montana- and Minnesota-based conduct relates to the claims in these cases, brought by state residents in Montana's and Minnesota's courts. Each plaintiff's suit, of course, arises from a car accident in one of those States. In each complaint, the resident-plaintiff alleges that a defective Ford vehicle—an Explorer in one, a Crown Victoria in the other—caused the crash and resulting harm. And as just described, Ford had advertised, sold, and serviced those two car models in both States for many years. (Contrast a case, which we do not address, in which Ford marketed the models in only a different State or region.) In other words, Ford had systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States. So there is a strong "relationship among the defendant, the forum, and the litigation"—the "essential foundation" of specific jurisdiction. *Helicopteros*, 466 U. S., at 414 (internal

quotation marks omitted). That is why this Court has used this exact fact pattern (a resident-plaintiff sues a global car company, extensively serving the state market in a vehicle, for an in-state accident) as an illustration—even a paradigm example—of how specific jurisdiction works. See *Daimler*, 571 U. S., at 127, n. 5; *supra*, at 364.[4]

The only complication here, pressed by Ford, is that the company sold the specific cars involved in these crashes outside the forum States, with consumers later selling them to the States' residents. Because that is so, Ford argues, the plaintiffs' claims "would be precisely the same if Ford had never done anything in Montana and Minnesota." Brief for Petitioner 46. Of course, that argument merely restates Ford's demand for an exclusively causal test of connection—which we have already shown is inconsistent with our caselaw. See Tr. of Oral Arg. 4; *supra*, at 361–362. And indeed, a similar assertion could have been made in *World-Wide Volkswagen*—yet the Court made clear that systematic contacts in Oklahoma rendered Audi accountable there for an in-state accident, even though it involved a car sold in New York. See *supra*, at 363–364. So too here, and for the

[4] None of this is to say that any person using any means to sell any good in a State is subject to jurisdiction there if the product malfunctions after arrival. We have long treated isolated or sporadic transactions differently from continuous ones. See, *e. g., World-Wide Volkswagen Corp.* v. *Woodson*, 444 U. S. 286, 297 (1980); *supra*, at 359. And we do not here consider internet transactions, which may raise doctrinal questions of their own. See *Walden* v. *Fiore*, 571 U. S. 277, 290, n. 9 (2014) ("[T]his case does not present the very different questions whether and how a defendant's virtual 'presence' and conduct translate into 'contacts' with a particular State"). So consider, for example, a hypothetical offered at oral argument. "[A] retired guy in a small town" in Maine "carves decoys" and uses "a site on the Internet" to sell them. Tr. of Oral Arg. 39. "Can he be sued in any state if some harm arises from the decoy?" *Ibid.* The differences between that case and the ones before us virtually list themselves. (Just consider all our descriptions of Ford's activities outside its home bases.) So we agree with the plaintiffs' counsel that resolving these cases does not also resolve the hypothetical. See *id.*, at 39–40.

same reasons, see *supra,* at 364–366—even supposing (as Ford does) that without the company's Montana or Minnesota contacts the plaintiffs' claims would be just the same.

But in any event, that assumption is far from clear. For the owners of these cars might never have bought them, and so these suits might never have arisen, except for Ford's contacts with their home States. Those contacts might turn any resident of Montana or Minnesota into a Ford owner—even when he buys his car from out of state. He may make that purchase because he saw ads for the car in local media. And he may take into account a raft of Ford's in-state activities designed to make driving a Ford convenient there: that Ford dealers stand ready to service the car; that other auto shops have ample supplies of Ford parts; and that Ford fosters an active resale market for its old models. The plaintiffs here did not in fact establish, or even allege, such causal links. But cf. *post,* at 373–374 (ALITO, J., concurring in judgment) (nonetheless finding some kind of causation). Nor should jurisdiction in cases like these ride on the exact reasons for an individual plaintiff's purchase, or on his ability to present persuasive evidence about them.[5] But the possibilities listed above—created by the reach of Ford's Montana and Minnesota contacts—underscore the aptness of finding jurisdiction here, even though the cars at issue were first sold out of state.

For related reasons, allowing jurisdiction in these cases treats Ford fairly, as this Court's precedents explain. In conducting so much business in Montana and Minnesota, Ford "enjoys the benefits and protection of [their] laws"—the enforcement of contracts, the defense of property, the resulting formation of effective markets. *International Shoe*, 326 U. S., at 319. All that assistance to Ford's in-state

[5] It should, for example, make no difference if a plaintiff had recently moved to the forum State with his car, and had not made his purchasing decision with that move in mind—so had not considered any of Ford's activities in his new home State.

business creates reciprocal obligations—most relevant here, that the car models Ford so extensively markets in Montana and Minnesota be safe for their citizens to use there. Thus our repeated conclusion: A state court's enforcement of that commitment, enmeshed as it is with Ford's government-protected in-state business, can "hardly be said to be undue." *Ibid.*; see *supra*, at 363–364. And as *World-Wide Volkswagen* described, it cannot be thought surprising either. An automaker regularly marketing a vehicle in a State, the Court said, has "clear notice" that it will be subject to jurisdiction in the State's courts when the product malfunctions there (regardless where it was first sold). 444 U. S., at 297; see *supra*, at 363. Precisely because that exercise of jurisdiction is so reasonable, it is also predictable—and thus allows Ford to "structure [its] primary conduct" to lessen or even avoid the costs of state-court litigation. *World-Wide Volkswagen*, 444 U. S., at 297.

Finally, principles of "interstate federalism" support jurisdiction over these suits in Montana and Minnesota. *Id.*, at 293. Those States have significant interests at stake—"providing [their] residents with a convenient forum for redressing injuries inflicted by out-of-state actors," as well as enforcing their own safety regulations. *Burger King*, 471 U. S., at 473; see *Keeton*, 465 U. S., at 776. Consider, next to those, the interests of the States of first sale (Washington and North Dakota)—which Ford's proposed rule would make the most likely forums. For each of those States, the suit involves all out-of-state parties, an out-of-state accident, and out-of-state injuries; the suit's only connection with the State is that a former owner once (many years earlier) bought the car there. In other words, there is a less significant "relationship among the defendant, the forum, and the litigation." *Walden*, 571 U. S., at 284 (internal quotation marks omitted). So by channeling these suits to Washington and North Dakota, Ford's regime would undermine, rather than promote, what the company calls the Due Process Clause's "jurisdiction-allocating function." Brief for Petitioner 24.

C

Ford mainly relies for its rule on two of our recent decisions—*Bristol-Myers* and *Walden*. But those precedents stand for nothing like the principle Ford derives from them. If anything, they reinforce all we have said about why Montana's and Minnesota's courts can decide these cases.

Ford says of *Bristol-Myers* that it "squarely foreclose[s]" jurisdiction. Reply Brief 2. In that case, non-resident plaintiffs brought claims in California state court against Bristol-Myers Squibb, the manufacturer of a nationally marketed prescription drug called Plavix. The plaintiffs had not bought Plavix in California; neither had they used or suffered any harm from the drug there. Still, the California Supreme Court thought it could exercise jurisdiction because Bristol-Myers Squibb sold Plavix in California and was defending there against identical claims brought by the State's residents. This Court disagreed, holding that the exercise of jurisdiction violated the Fourteenth Amendment. In Ford's view, the same must be true here. Each of these plaintiffs, like the plaintiffs in *Bristol-Myers*, alleged injury from a particular item (a car, a pill) that the defendant had sold outside the forum State. Ford reads *Bristol-Myers* to preclude jurisdiction when that is true, even if the defendant regularly sold "the same *kind* of product" in the State. Reply Brief 2 (emphasis in original).

But that reading misses the point of our decision. We found jurisdiction improper in *Bristol-Myers* because the forum State, and the defendant's activities there, lacked any connection to the plaintiffs' claims. See 582 U. S., at 265 ("What is needed—and what is missing here—is a connection between the forum and the specific claims at issue"). The plaintiffs, the Court explained, were not residents of California. They had not been prescribed Plavix in California. They had not ingested Plavix in California. And they had not sustained their injuries in California. See *id.*, at 265–266 (emphasizing these points). In short, the plaintiffs

were engaged in forum-shopping—suing in California because it was thought plaintiff-friendly, even though their cases had no tie to the State. See *id.*, at 266 (distinguishing the Plavix claims from the litigation in *Keeton*, see *supra*, at 364, because they "involv[e] no in-state injury and no injury to residents of the forum State"). That is not at all true of the cases before us. Yes, Ford sold the specific products in other States, as Bristol-Myers Squibb had. But here, the plaintiffs are residents of the forum States. They used the allegedly defective products in the forum States. And they suffered injuries when those products malfunctioned in the forum States. In sum, each of the plaintiffs brought suit in the most natural State—based on an "affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that t[ook] place" there. *Bristol-Myers*, 582 U. S., at 262, 264 (internal quotation marks omitted). So *Bristol-Myers* does not bar jurisdiction.

Ford falls back on *Walden* as its last resort. In that case, a Georgia police officer working at an Atlanta airport searched, and seized money from, two Nevada residents before they embarked on a flight to Las Vegas. The victims of the search sued the officer in Nevada, arguing that their alleged injury (their inability to use the seized money) occurred in the State in which they lived. This Court held the exercise of jurisdiction in Nevada improper even though "the plaintiff[s] experienced [the] effect[s]" of the officer's conduct there. 571 U. S., at 290. According to Ford, our ruling shows that a plaintiff's residence and place of injury can never support jurisdiction. See Brief for Petitioner 32. And without those facts, Ford concludes, the basis for jurisdiction crumbles here as well.

But *Walden* has precious little to do with the cases before us. In *Walden*, only the plaintiffs had any contacts with the State of Nevada; the defendant-officer had never taken any act to "form[ ] a contact" of his own. 571 U. S., at 290. The officer had "never traveled to, conducted activities within, contacted anyone in, or sent anything or anyone to Nevada."

Id., at 289. So to use the language of our doctrinal test: He had not "purposefully avail[ed himself] of the privilege of conducting activities" in the forum State. *Hanson*, 357 U. S., at 253. Because that was true, the Court had no occasion to address the necessary connection between a defendant's in-state activity and the plaintiff's claims. But here, Ford has a veritable truckload of contacts with Montana and Minnesota, as it admits. See *supra*, at 364–365. The only issue is whether those contacts are related enough to the plaintiffs' suits. As to that issue, so what if (as *Walden* held) the place of a plaintiff's injury and residence cannot create a defendant's contact with the forum State? Those places still may be relevant in assessing the link between the defendant's forum contacts and the plaintiff's suit—including its assertions of who was injured where. And indeed, that relevance is a key part of *Bristol-Myers*' reasoning. See 582 U. S., at 265–266 (finding a lack of "connection" in part because the "plaintiffs are not California residents and do not claim to have suffered harm in that State"). One of Ford's own favorite cases thus refutes its appeal to the other.

* * *

Here, resident-plaintiffs allege that they suffered in-state injury because of defective products that Ford extensively promoted, sold, and serviced in Montana and Minnesota. For all the reasons we have given, the connection between the plaintiffs' claims and Ford's activities in those States—or otherwise said, the "relationship among the defendant, the forum[s], and the litigation"—is close enough to support specific jurisdiction. *Walden*, 571 U. S., at 284 (internal quotation marks omitted). The judgments of the Montana and Minnesota Supreme Courts are therefore affirmed.

It is so ordered.

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

JUSTICE ALITO, concurring in the judgment.

These cases can and should be decided without any alteration or refinement of our case law on specific personal jurisdiction. To be sure, for the reasons outlined in JUSTICE GORSUCH's thoughtful opinion, there are grounds for questioning the standard that the Court adopted in *International Shoe Co.* v. *Washington*, 326 U. S. 310 (1945). And there are also reasons to wonder whether the case law we have developed since that time is well suited for the way in which business is now conducted. But there is nothing distinctively 21st century about the question in the cases now before us, and the answer to that question is settled by our case law.

Since *International Shoe*, the rule has been that a state court can exercise personal jurisdiction over a defendant if the defendant has "minimum contacts" with the forum—which means that the contacts must be "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.*, at 316 (quoting *Milliken* v. *Meyer*, 311 U. S. 457, 463 (1940)).

That standard is easily met here. Ford has long had a heavy presence in Minnesota and Montana. It spends billions on national advertising. It has many franchises in both States. Ford dealers in Minnesota and Montana sell and service Ford vehicles, and Ford ships replacement parts to both States. In entertaining these suits, Minnesota and Montana courts have not reached out and grabbed suits in which they "have little legitimate interest." *Bristol-Myers Squibb Co.* v. *Superior Court of Cal., San Francisco Cty.*, 582 U. S. 255, 263 (2017). *Their* residents, while riding in vehicles purchased within *their* borders, were killed or injured in accidents on *their* roads. Can anyone seriously argue that requiring Ford to litigate these cases in Minnesota and Montana would be fundamentally unfair?

Well, Ford makes that argument. It would send the plaintiffs packing to the jurisdictions where the vehicles in ques-

tion were assembled (Kentucky and Canada), designed (Michigan), or first sold (Washington and North Dakota) or where Ford is incorporated (Delaware) or has its principal place of business (Michigan).

As might have been predicted, the Court unanimously rejects this understanding of "traditional notions of fair play and substantial justice." And in doing so, we merely follow what we said in *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U. S. 286, 297–298 (1980), which was essentially this: If a car manufacturer makes substantial efforts to sell vehicles in States A and B (and other States), and a defect in a vehicle first sold in State A causes injuries in an accident in State B, the manufacturer can be sued in State B. That rule decides these cases.

Ford, however, asks us to adopt an unprecedented rule under which a defendant's contacts with the forum State must be proven to have been a but-for cause of the tort plaintiff's injury. The Court properly rejects that argument, and I agree with the main thrust of the Court's opinion. My only quibble is with the new gloss that the Court puts on our case law. Several of our opinions have said that a plaintiff's claims "'must arise out of or relate to the defendant's contacts'" with the forum. See *ante*, at 359 (citing cases). The Court parses this phrase "as though we were dealing with language of a statute," *Reiter* v. *Sonotone Corp.*, 442 U. S. 330, 341 (1979), and because this phrase is cast in the disjunctive, the Court recognizes a new category of cases in which personal jurisdiction is permitted: those in which the claims do not "arise out of" (*i. e.*, are not caused by) the defendant's contacts but nevertheless sufficiently "relate to" those contacts in some undefined way, *ante*, at 361–362.

This innovation is unnecessary and, in my view, unwise. To say that the Constitution does not require the kind of proof of causation that Ford would demand—what the majority describes as a "strict causal relationship," *ante*, at 362—is not to say that no causal link of any kind is needed. And

here, there is a sufficient link. It is reasonable to infer that the vehicles in question here would never have been on the roads in Minnesota and Montana if they were some totally unknown brand that had never been advertised in those States, was not sold in those States, would not be familiar to mechanics in those States, and could not have been easily repaired with parts available in those States. See *ante*, at 367 (describing this relationship between Ford's activities and these suits). The whole point of those activities was to put more Fords (including those in question here) on Minnesota and Montana roads. The common-sense relationship between Ford's activities and these suits, in other words, is causal in a broad sense of the concept, and personal jurisdiction can rest on this type of link without strict proof of the type Ford would require. When "arise out of" is understood in this way, it is apparent that "arise out of" and "relate to" overlap and are not really two discrete grounds for jurisdiction. The phrase "arise out of or relate to" is simply a way of restating the basic "minimum contacts" standard adopted in *International Shoe*.

Recognizing "relate to" as an independent basis for specific jurisdiction risks needless complications. The "ordinary meaning" of the phrase "relate to" "is a broad one." *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374, 383 (1992). Applying that phrase "according to its terms [is] a project doomed to failure, since, as many a curbstone philosopher has observed, everything is related to everything else." *California Div. of Labor Standards Enforcement* v. *Dillingham Constr., N. A., Inc.*, 519 U. S. 316, 335 (1997) (Scalia, J., concurring). To rein in this phrase, limits must be found, and the Court assures us that "relate to," as it now uses the concept, "incorporates real limits." *Ante*, at 362. But without any indication what those limits might be, I doubt that the lower courts will find that observation terribly helpful. Instead, what limits the potentially boundless reach of

"relate to" is just the sort of rough causal connection I have described.

I would leave the law exactly where it stood before we took these cases, and for that reason, I concur in the judgment.

JUSTICE GORSUCH, with whom JUSTICE THOMAS joins, concurring in the judgment.

Since *International Shoe Co.* v. *Washington*, 326 U. S. 310 (1945), this Court's cases have sought to divide the world of personal jurisdiction in two. A tribunal with "general jurisdiction" may entertain any claim against the defendant. But to trigger this power, a court usually must ensure the defendant is "'at home'" in the forum State. *Daimler AG* v. *Bauman*, 571 U. S. 117, 137 (2014). Meanwhile, "specific jurisdiction" affords a narrower authority. It applies only when the defendant "'purposefully avails'" itself of the opportunity to do business in the forum State and the suit "'arise[s] out of or relate[s] to'" the defendant's contacts with the forum State. *Burger King Corp.* v. *Rudzewicz*, 471 U. S. 462, 472, 475 (1985).

While our cases have long admonished lower courts to keep these concepts distinct, some of the old guardrails have begun to look a little battered. Take general jurisdiction. If it made sense to speak of a corporation having one or two "homes" in 1945, it seems almost quaint in 2021 when corporations with global reach often have massive operations spread across multiple States. To cope with these changing economic realities, this Court has begun cautiously expanding the old rule in "'exceptional case[s].'" *BNSF R. Co.* v. *Tyrrell*, 581 U. S. 402, 413 (2017).

Today's case tests the old boundaries from another direction. Until now, many lower courts have proceeded on the premise that specific jurisdiction requires two things. First, the defendant must "purposefully avail" itself of the chance

to do business in a State. Second, the plaintiff's suit must "arise out of or relate to" the defendant's in-state activities. Typically, courts have read this second phrase as a unit requiring at least a but-for causal link between the defendant's local activities and the plaintiff's injuries. *E. g.*, *Tamburo* v. *Dworkin*, 601 F. 3d 693, 708–709 (CA7 2010) (collecting cases); see also *Burger King*, 471 U. S., at 475 (discussing "proximat[e] result[s]"). As every first year law student learns, a but-for causation test isn't the most demanding. At a high level of abstraction, one might say any event in the world would not have happened "but for" events far and long removed.

Now, though, the Court pivots away from this understanding. Focusing on the phrase "arise out of or relate to" that so often appears in our cases, the majority asks us to parse those words "as though we were dealing with language of a statute." *Reiter* v. *Sonotone Corp.*, 442 U. S. 330, 341 (1979). In particular, the majority zeros in on the disjunctive conjunction "or," and proceeds to build its entire opinion around that linguistic feature. *Ante*, at 362. The majority admits that "arise out of " may connote causation. But, it argues, "relate to" is an independent clause that does not.

Where this leaves us is far from clear. For a case to "relate to" the defendant's forum contacts, the majority says, it is enough if an "affiliation" or "relationship" or "connection" exists between them. *Ante*, at 359, 365, 369. But what does this assortment of nouns *mean*? Loosed from any causation standard, we are left to guess. The majority promises that its new test "does not mean anything goes," but that hardly tells us what does. *Ante*, at 362. In some cases, the new test may prove more forgiving than the old causation rule. But it's hard not to wonder whether it may also sometimes turn out to be more demanding. Unclear too is whether, in cases like that, the majority would treat causation and "affiliation" as alternative routes to specific jurisdiction, or whether it would deny jurisdiction outright.

For a glimpse at the complications invited by today's decision, consider its treatment of North Dakota and Washington. Those are the States where Ford first sold the allegedly defective cars at issue in the cases before us. The majority seems to suggest that, if the plaintiffs had sought to bring their suits in those States, they would have failed. The majority stresses that the "only connection" between the plaintiffs' claims and North Dakota and Washington is the fact that former owners once bought the allegedly defective cars there. *Ante*, at 368. But the majority never tells us why that "connection" isn't enough. Surely, North Dakota and Washington would contend they have a strong interest in ensuring they don't become marketplaces for unreasonably dangerous products. Nor is it clear why the majority casts doubt on the availability of specific jurisdiction in these States without bothering to consider whether the old causation test might allow it. After all, no one doubts Ford purposefully availed itself of those markets. The plaintiffs' injuries, at least arguably, "arose from" (or were caused by) the sale of defective cars in those places. Even if the majority's new affiliation test isn't satisfied, don't we still need to ask those causation questions, or are they now to be abandoned?

Consider, too, a hypothetical the majority offers in a footnote. The majority imagines a retiree in Maine who starts a one-man business, carving and selling wooden duck decoys. In time, the man sells a defective decoy over the Internet to a purchaser in another State who is injured. See *ante*, at 366, n. 4. We aren't told how. (Was the decoy coated in lead paint?) But put that aside. The majority says this hypothetical supplies a useful study in contrast with our cases. On the majority's telling, Ford's "continuous" contacts with Montana and Minnesota are enough to establish an "affiliation" with those States; by comparison, the decoy seller's contacts may be too "isolated" and "sporadic" to entitle an injured buyer to sue in his home State. But if this compari-

son highlights anything, it is only the litigation sure to follow. For between the poles of "continuous" and "isolated" contacts lie a virtually infinite number of "affiliations" waiting to be explored. And when it comes to that vast terrain, the majority supplies no meaningful guidance about what kind or how much of an "affiliation" will suffice. Nor, once more, does the majority tell us whether its new affiliation test supplants or merely supplements the old causation inquiry.

Not only does the majority's new test risk adding new layers of confusion to our personal jurisdiction jurisprudence. The whole project seems unnecessary. Immediately after disavowing any need for a causal link between the defendant's forum activities and the plaintiffs' injuries, the majority proceeds to admit that such a link may be present here. *Ante*, at 367. The majority stresses that the Montana and Minnesota plaintiffs before us "might" have purchased their cars because of Ford's activities in their home States. They "may" have relied on Ford's local advertising. And they "may" have depended on Ford's promise to furnish in-state servicers and dealers. If the majority is right about these things, that would be more than enough to establish a but-for causal link between Ford's in-state activities and the plaintiffs' decisions to purchase their allegedly defective vehicles. Nor should that result come as a surprise: One might expect such causal links to be easy to prove in suits against corporate behemoths like Ford. All the new euphemisms—"affiliation," "relationship," "connection"—thus seem pretty pointless.[1]

[1] The majority says personal jurisdiction should not turn on a plaintiff's ability to "allege" or "establish" his or her reasons for doing business with the defendant. *Ante*, at 367. But the implicit assumption here—that the plaintiff bears the burden of proving personal jurisdiction—is often mistaken. Perhaps because a lack of personal jurisdiction is a waivable affirmative defense, some States place the burden of proving the defense on the defendant. Even in places where the plaintiff bears the burden, I fail to see why it would be so terrible (or burdensome) to require an individual to plead and prove his or her reasons for purchase. Frequently, doing so

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With the old *International Shoe* dichotomy looking increasingly uncertain, it's hard not to ask how we got here and where we might be headed.

Before *International Shoe*, it seems due process was usually understood to guarantee that only a court of competent jurisdiction could deprive a defendant of his life, liberty, or property. In turn, a court's competency normally depended on the defendant's presence in, or consent to, the sovereign's jurisdiction. But once a plaintiff was able to "tag" the defendant with process in the jurisdiction, that State's courts were generally thought competent to render judgment on any claim against the defendant, whether it involved events inside or outside the State. *Pennoyer* v. *Neff*, 95 U. S. 714, 733 (1878); *Burnham* v. *Superior Court of Cal., County of Marin*, 495 U. S. 604, 610–611 (1990); J. Story, Commentaries on the Conflict of Laws 912–913 (3d ed. 1846); *Massie* v. *Watts*, 6 Cranch 148, 157, 161–162 (1810).[2]

International Shoe's emergence may be attributable to many influences, but at least part of the story seems to involve the rise of corporations and interstate trade. See *Honda Motor Co.* v. *Oberg*, 512 U. S. 415, 431 (1994). A corporation doing business in its State of incorporation is one thing; the old physical presence rules for individuals seem

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may be simple—far simpler than showing how the defendant's connections with the jurisdiction satisfy a new and amorphous "affiliation" test.

[2] Some disagree that due process requires even this much. Recent scholarship, for example, contends *Pennoyer*'s territorial account of sovereign power is mostly right, but the rules it embodies are not "fixed in constitutional amber"—that is, Congress might be able to change them. Sachs, *Pennoyer* Was Right, 95 Texas L. Rev. 1249, 1255 (2017). Others suggest that fights over personal jurisdiction would be more sensibly waged under the Full Faith and Credit Clause. Jackson, Full Faith and Credit—The Lawyer's Clause of the Constitution, 45 Colum. L. Rev. 1, 3 (1945). Whether these theories are right or wrong, they at least seek to answer the right question—what the Constitution as originally understood requires, not what nine judges consider "fair" and "just."

easily adaptable to them. But what happens when a corporation, created and able to operate thanks to the laws of one State, seeks the privilege of sending agents or products into another State?

Early on, many state courts held conduct like that renders an out-of-state corporation present in the second jurisdiction. And a present company could be sued for any claim, so long as the plaintiff served an employee doing corporate business within the second State. *E. g.*, *Pennsylvania Lumbermen's Mut. Fire Ins. Co.* v. *Meyer*, 197 U. S. 407, 413–415 (1905). Other States sought to obviate any potential question about corporate jurisdiction by requiring an out-of-state corporation to incorporate under their laws too, or at least designate an agent for service of process. Either way, the idea was to secure the out-of-state company's presence or consent to suit. *E. g.*, *Pennsylvania Fire Ins. Co. of Philadelphia* v. *Gold Issue Mining & Milling Co.*, 243 U. S. 93, 95–96 (1917).

Unsurprisingly, corporations soon looked for ways around rules like these. No one, after all, has ever liked greeting the process server. For centuries, individuals facing imminent suit sought to avoid it by fleeing the court's territorial jurisdiction. But this tactic proved "too crude for the American business genius," and it held some obvious disadvantages. See Jackson, What Price "Due Process," 5 N. Y. L. Rev. 435, 436 (1927). Corporations wanted to retain the privilege of sending their personnel and products to other jurisdictions where they lacked a charter to do business. At the same time, when confronted with lawsuits in the second forum, they sought to hide behind their foreign charters and deny their presence. Really, their strategy was to do business without being seen to do business. *Id.*, at 438 ("No longer is the foreign corporation confronted with the problem 'to be or not to be'—it can both be and not be!").

Initially and routinely, state courts rejected ploys like these. See, *e. g.*, *Pullman Palace Car Co.* v. *Lawrence*, 74 Miss. 782, 796–799, 22 So. 53, 55–56 (Miss. 1897). But, in a

series of decisions at the turn of the last century, this Court eventually provided a more receptive audience. On the one hand, the Court held that an out-of-state corporation often has a right to do business in another State unencumbered by that State's registration rules, thanks to the so-called dormant Commerce Clause. *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 107–112 (1910). On the other hand, the Court began invoking the Due Process Clause to restrict the circumstances in which an out-of-state corporation could be deemed present. So, for example, the Court ruled that even an Oklahoma corporation purchasing a large portion of its merchandise in New York was not "doing business" there. *Rosenberg Bros. & Co.* v. *Curtis Brown Co.*, 260 U. S. 516, 517–518 (1923). Perhaps advocates of this arrangement thought it promoted national economic growth. See Dodd, Jurisdiction in Personal Actions, 23 Ill. L. Rev. 427, 444–445 (1929). But critics questioned its fidelity to the Constitution and traditional jurisdictional principles, noting that it often left injured parties with no practical forum for their claims too. Jackson, 5 N. Y. L. Rev., at 436–438.

In many ways, *International Shoe* sought to start over. The Court "cast . . . aside" the old concepts of territorial jurisdiction that its own earlier decisions had seemingly twisted in favor of out-of-state corporations. *Burnham*, 495 U. S., at 618. At the same time, the Court *also* cast doubt on the idea, once pursued by many state courts, that a company "consents" to suit when it is forced to incorporate or designate an agent for receipt of process in a jurisdiction other than its home State. *Ibid.*[3] In place of nearly everything that had come before, the Court sought to build a new test

[3] It is unclear what remains of the old "consent" theory after *International Shoe*'s criticism. Some courts read *International Shoe* and the cases that follow as effectively foreclosing it, while others insist it remains viable. Compare *Lanham* v. *BNSF R. Co.*, 305 124, 130–136, 939 N. W. 2d 363, 368–371 (2020), with *Rodriguez* v. *Ford Motor Co.*, 2019–NMCA–023, ¶12–¶14, 458 P. 3d 569, 575–576.

focused on "'traditional notions of fair play and substantial justice.'" *International Shoe*, 326 U. S., at 316 (quoting *Milliken* v. *Meyer*, 311 U. S. 457, 463 (1940)).

It was a heady promise. But it is unclear how far it has really taken us. Even today, this Court usually considers corporations "at home" and thus subject to general jurisdiction in only one or two States. All in a world where global conglomerates boast of their many "headquarters." The Court has issued these restrictive rulings, too, even though *individual* defendants remain subject to the old "tag" rule, allowing them to be sued on any claim anywhere they can be found. *Burnham*, 495 U. S., at 610–611.[4] Nearly 80 years removed from *International Shoe*, it seems corporations continue to receive special jurisdictional protections in the name of the Constitution. Less clear is why.

Maybe, too, *International Shoe* just doesn't work quite as well as it once did. For a period, its specific jurisdiction test might have seemed a reasonable new substitute for assessing corporate "presence," a way to identify those out-of-state corporations that were simply pretending to be absent from jurisdictions where they were really transacting business. When a company "purposefully availed" itself of the benefits of another State's market in the 1940s, it often involved sending in agents, advertising in local media, or developing a network of on-the-ground dealers, much as Ford did in these cases. *E. g.*, *International Shoe*, 326 U. S., at 313–314, 320. But, today, even an individual retiree carving wooden decoys in Maine can "purposefully avail" himself of the chance to do business across the continent after drawing online orders to his e-Bay "store" thanks to Internet advertising with global

[4] Since *Burnham*, some courts have sought to revive the tag rule for artificial entities while others argue that doing so would be inconsistent with *International Shoe*. Compare *First Am. Corp.* v. *Price Waterhouse LLP*, 154 F. 3d 16, 20–21 (CA2 1998), with *Martinez* v. *Aero Caribbean*, 764 F. 3d 1062, 1067–1069 (CA9 2014).

reach. *Ante*, at 366, n. 4. A test once aimed at keeping corporations honest about their out-of-state operations now seemingly risks hauling individuals to jurisdictions where they have never set foot.

Perhaps this is the real reason why the majority introduces us to the hypothetical decoy salesman. Yes, he arguably availed himself of a new market. Yes, the plaintiff's injuries arguably arose from (or were caused by) the product he sold there. Yes, *International Shoe*'s old causation test would seemingly allow for personal jurisdiction. But maybe the majority resists that conclusion because the old test no longer seems as reliable a proxy for determining corporate presence as it once did. Maybe *that's* the intuition lying behind the majority's introduction of its new "affiliation" rule and its comparison of the Maine retiree's "sporadic" and "isolated" sales in the plaintiff's State and Ford's deep "relationships" and "connections" with Montana and Minnesota. *Ante*, at 366, n. 4.

If that is the logic at play here, I cannot help but wonder if we are destined to return where we began. Perhaps all of this Court's efforts since *International Shoe*, including those of today's majority, might be understood as seeking to recreate in new terms a jurisprudence about corporate jurisdiction that was developing before this Court's muscular interventions in the early 20th century. Perhaps it was, is, and in the end always will be about trying to assess fairly a corporate defendant's presence or consent. *International Shoe* may have sought to move past those questions. But maybe all we have done since is struggle for new words to express the old ideas. Perhaps, too, none of this should come as a surprise. New technologies and new schemes to evade the process server will always be with us. But if our concern is with "'*traditional* notions of fair play and substantial justice,'" *International Shoe*, 326 U. S., at 316 (emphasis added), not just our personal and idiosyncratic impres-

sions of those things, perhaps we will always wind up asking variations of the same questions.[5]

None of this is to cast doubt on the outcome of these cases. The parties have not pointed to anything in the Constitution's original meaning or its history that might allow Ford to evade answering the plaintiffs' claims in Montana or Minnesota courts. No one seriously questions that the company, seeking to do business, entered those jurisdictions through the front door. And I cannot see why, when faced with the process server, it should be allowed to escape out the back. Jackson, 5 N. Y. L. Rev., at 439. The real struggle here isn't with settling on the right outcome in these cases, but with making sense of our personal jurisdiction jurisprudence and *International Shoe*'s increasingly doubtful dichotomy. On those scores, I readily admit that I finish these cases with even more questions than I had at the start. Hopefully, future litigants and lower courts will help us face these tangles and sort out a responsible way to address the challenges posed by our changing economy in light of the Constitution's text and the lessons of history.

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[5] The majority worries that the thoughts expressed here threaten to "transfigure our specific jurisdiction standard as applied to corporations" and "return [us] to the mid-19th century." *Ante*, at 360, n. 2; *ante*, at 362–363, n. 3. But it has become a tired trope to criticize any reference to the Constitution's original meaning as (somehow) both radical and antiquated. Seeking to understand the Constitution's original meaning is part of our job. What's the majority's real worry anyway—that corporations might lose special protections? The Constitution has always allowed suits against *individuals* on any issue in any State where they set foot. *Supra*, at 379–380. Yet the majority seems to recoil at even entertaining the possibility the Constitution might tolerate similar results for "nationwide corporation[s]," whose "business is everywhere." *Ante*, at 355; *ante*, at 362, n. 3.

Syllabus

MAYS, WARDEN *v.* HINES

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

No. 20–507. Decided March 29, 2021

A Tennessee jury found Anthony Hines guilty of murdering Katherine Jenkins at the motel where she worked. Overwhelming evidence supported the conviction. Hines traveled to the motel with a hunting knife, and he checked in on the same day that Jenkins' body was found in one of the rooms with multiple knife wounds. He stole Jenkins money and car keys, and fled the scene in her vehicle. Not long after, travelers found Hines on the road next to Jenkins' broken-down car. They testified that Hines had dried blood on his shirt. Hines told his family that he had stabbed a male motel employee that day, but not Jenkins. And though he initially volunteered to the sheriff that he took Jenkins' car but did not kill her, he later offered to confess to the murder if the death penalty could be guaranteed. The jury also heard testimony from Kenneth Jones, the man who discovered Jenkins' body. Hines' counsel cast doubt on Jones' explanation of why he was at the hotel, which was vague. But after hearing all this evidence and more, the jury found Hines guilty. Hines later sought postconviction relief, claiming his counsel was ineffective for not arguing that Jones could have killed Jenkins. In a new statement, Jones admitted that he had lied at Hines' trial about the reason he was at the motel—he actually was there with a woman who was not his wife. Apparently Hines' attorney had known of Jones' affair, but decided not to pursue the matter aggressively at trial. Although Hines insisted that this choice amounted to ineffective assistance of counsel, the Tennessee postconviction court found no prejudice. *Hines* v. *State*, 2004 WL 1567120, *8, *22, *27–*28 (Tenn. Crim. App. July 14, 2004). Sixteen years later, a divided panel of the Sixth Circuit disagreed and granted habeas relief.

Held: The Sixth Circuit erred in granting a writ of federal habeas corpus because the Tennessee court reasonably rejected Hines' ineffective assistance of counsel theory. 28 U. S. C. §2254(d). A federal court may intrude on a State's sovereign power to punish offenders only when a decision "was so lacking in justification . . . beyond any possibility for fairminded disagreement." *Harrington* v. *Richter*, 562 U. S. 86, 103. The Sixth Circuit focused on the reasons Jones might have been a viable

alternative suspect, but the appropriate question on federal habeas review was whether the Tennessee court, notwithstanding its substantial "latitude to reasonably determine that a defendant has not [shown prejudice]," reached a result as to which every fairminded jurist would disagree. *Knowles* v. *Mirzayance*, 556 U. S. 111, 123. Here the Tennessee court reasonably reviewed "the strength of proof against [Hines]," and dismissed as " 'farfetched' " that trial counsel should have accused Jones of committing (and self-reporting) a grisly crime in a public place where he was "known by the staff." *Hines*, 2004 WL 1567120, *27. The emergence of a new corroborating witness—Jones' companion—further undermined any suggestion that Jones was the culprit, and the court reasoned that Jones' true purpose for being at the motel had little relevance to Hines' conviction or sentence. *Id.*, at *28. Despite the Tennessee court's straightforward analysis, the Sixth Circuit disregarded the overwhelming evidence of guilt that supported the Tennessee court's conclusion. In doing so, it violated Congress' prohibition on disturbing state-court judgments on federal habeas review absent an error that lies " 'beyond any possibility for fairminded disagreement.' " *Shinn* v. *Kayer*, 592 U. S. 111, 112 (*per curiam*); § 2254(d). The petition for a writ of certiorari and respondent's motion to proceed *in forma pauperis* are granted; the decision below is reversed.

Certiorari granted; 814 Fed. Appx. 898, reversed.

PER CURIAM.

A Tennessee jury found Anthony Hines guilty of murdering Katherine Jenkins at a motel. Witnesses saw Hines fleeing in the victim's car and wearing a bloody shirt, and his family members heard him admit to stabbing *someone* at the motel. But almost 35 years later, the Sixth Circuit held that Hines was entitled to a new trial and sentence because his attorney should have tried harder to blame another man. In reaching its conclusion, the Sixth Circuit disregarded the overwhelming evidence of guilt that supported the contrary conclusion of a Tennessee court. This approach plainly violated Congress' prohibition on disturbing state-court judgments on federal habeas review absent an error that lies " 'beyond any possibility for fairminded disagreement.' " *Shinn* v. *Kayer*, 592 U. S. 111, 112 (2020) (*per curiam*); 28 U. S. C. § 2254(d). We now reverse.

I

On March 1, 1985, Hines boarded a bus traveling from Raleigh, North Carolina, to Bowling Green, Kentucky. His girlfriend and her mother had given him the bus ticket and $20. Hines also carried with him a hunting knife concealed beneath his shirt. When the mother asked about the knife, Hines explained: "'I never go anywhere naked.'" "'I always have my blade.'" Record in *Hines* v. *Carpenter*, No. 3:05–cv–00002 (MD Tenn.), Doc. 173–4, p. 112.

Hines' travels brought him to the outskirts of Nashville, where he checked into the CeBon Motel. Jenkins worked there as a maid. A few hours after Hines' arrival, the manager put Jenkins in charge of the motel and provided her with a bag of money to make change for departing guests.

In the early afternoon, another visitor found Jenkins' body in one of the rooms. She was wrapped in a bloody bedsheet, and an autopsy later revealed several knife wounds that included deep punctures to her chest and genitalia. Her money, wallet, and car keys were missing, as was her vehicle. Around the same time, another employee saw a man leaving the motel in Jenkins' car. The employee tried to follow the vehicle, but it sped away.

Later that afternoon, a group of travelers found Hines and the car—now broken down—along the side of the road, and they offered to drive him toward his sister's home in Bowling Green. During the trip, the travelers observed that Hines had dried blood on his shirt and was carrying a folded-up jacket. They also noticed that Hines "seemed real nervous," "ke[pt] contradicting himself," and "talked a lot," at one point claiming that he had purchased the car from an "old lady for $300 or $400." *Id.*, Doc. 173–2, at 33, 56; *id.*, Doc. 173–3, at 34–35.

Hines told a different story to his family. His sister noticed the blood, and Hines admitted that he had stabbed somebody at the motel—although he described the victim as a male employee who had assaulted him. For good measure,

Hines physically demonstrated how he had knifed the supposed assailant. Despite his inability to pay for a bus ticket just a few days earlier, Hines purchased a barbecue grill and informed his sister that he had acquired a substantial sum of money. Family members also noticed that he had the keys to Jenkins' car, which were on a distinctive keychain. According to Hines, he had taken the keys in a struggle with yet another man who had tried to rob him.

Hines altered his tale again when he surrendered to law enforcement. Before the sheriff started questioning him, Hines volunteered that "he took the automobile but he didn't murder the woman." *Id.*, at 54–55, 57. But Hines later changed his mind and offered to confess to the murder if the sheriff "could guarantee him the death penalty." *Id.*, Doc. 173–4, at 72.

The investigation turned up other physical evidence connecting Hines to the crime. Police found Jenkins' wallet where Hines had abandoned her car. And a search of his motel room revealed stab marks on the walls that were similar in size to the wounds on Jenkins' body. When an investigator asked Hines about the damage, he identified the holes as "'knife marks.'" *Id.*, at 83–84.

The jury heard all of this evidence at trial. It also heard testimony from the man—Kenneth Jones—who had discovered Jenkins' body. According to Jones, he knew the owners of the motel and had stopped by on the afternoon of the murder. Finding no one in the office, Jones had lingered outside before realizing that he needed to use the bathroom. He returned to the office, took a key, and entered the room. Hines' counsel stressed to the jury this oddly fortuitous sequence of events, noting that "Jones was fooling around at that motel that Sunday afternoon"; that Jones seemed "nervous"; and that Jones just happened to be present when "[t]here was a lot of something going on." *Id.*, Doc. 173–6, at 72–73. The jury also heard discrepancies between Jones'

account of finding the body and the timeline given by first responders. But it found Hines guilty.

The full truth came out several years later when Hines sought postconviction review in the Tennessee courts. In a new statement, Jones admitted that he was at the motel neither by happenstance nor by himself, but rather in the company of a woman other than his wife. The duo had rendezvoused at the motel nearly every Sunday for at least two years, and Jones was well known to the staff. But when Jones and his companion arrived on the day of the murder, they found no one to greet them. After waiting for a while, first at the motel and then at a nearby restaurant, Jones became impatient and helped himself to a room key from the office. Upon finding the body, he quickly returned to his vehicle—a fact confirmed by his companion who watched through the room's open curtains as Jones entered and left. Jones then called the authorities, drove his companion home, and returned to the motel to meet the sheriff.

The postconviction proceedings also revealed that Hines' attorney was generally aware of Jones' affair from the outset, yet had decided to spare him the embarrassment of aggressively pursuing the matter. *Hines* v. *State*, 2004 WL 1567120, *8 (Tenn. Crim. App., July 14, 2004). But despite Hines' current insistence that this choice amounted to ineffective assistance of counsel, the Tennessee postconviction court found no prejudice. *Id.*, at *22, *27–*28; see also *Strickland* v. *Washington*, 466 U. S. 668, 687 (1984) ("[T]he defendant must show that . . . counsel's errors were so serious as to deprive the defendant of a fair trial"). The court stressed "the strength of proof against [Hines]," and it dismissed as "'farfetched'" that trial counsel should have accused Jones of committing (and self-reporting) a grisly crime in a public place where he was "known by the staff." *Hines*, 2004 WL 1567120, *27. Such an argument, the court explained, "could have resulted in a loss of credibility for the

defense." *Ibid.* The court also observed that the emergence of a new corroborating witness—Jones' companion—further undermined any suggestion that he was the culprit. *Id.*, at *28. And though Jones' evolving story deprived the jury of all the facts, the court reasoned that his "true purpose for being at the [m]otel" had little relevance to Hines' conviction or sentence. *Ibid.*

Sixteen years later, a divided panel of the Sixth Circuit disagreed. 814 Fed. Appx. 898 (2020). According to the majority, a better investigation "could have helped the defense to credibly cast Jones as an alternative suspect, or at the very least seriously undermine his testimony." *Id.*, at 938. For example, trial counsel could have claimed that Jones killed Jenkins to cover up his affair. Counsel might also have highlighted that Jones was planning to rent a room from Jenkins on the day of the crime. *Id.*, at 938–939. Or counsel might have better stressed potential flaws in Jones' version of events, such as discrepancies about the exact time he reported the murder. *Id.*, at 940. The majority further surmised that Hines had "no clear motive" for the murder, and it noted the absence of "DNA or fingerprint evidence." *Id.*, at 939.

Missing from this analysis, however, was the voluminous evidence of Hines' guilt. Among many other things, the majority disregarded Hines' flight in a bloodstained shirt, his theft of the vehicle and money, and his ever-changing stories about stabbing and robbing various people on the day of the crime. See generally *id.*, at 937–942.

Judge Kethledge dissented. In his view, the majority "'nowhere g[ave] deference to the state courts, nowhere explain[ed] why their application of *Strickland* was unreasonable rather than merely (in the majority's view) incorrect, and nowhere explain[ed] why fairminded jurists could view [Hines'] claim only the same way the majority d[id].'" *Id.*, at 942. Judge Kethledge then reviewed all of the evidence

ignored by the majority. He found "zero reason to think that, after investigation, counsel could have presented Jones as the 'real killer.'" *Id.*, at 944. And he explained that impeaching Jones "would have been a waste of time" because Jones had "offered no testimony regarding Hine[s'] guilt." *Ibid.*

II

Hines' legal theory is straightforward: A competent attorney would have presented the full truth about Jones' affair and blamed him for the crime. According to Hines, this strategy would have deflected so much suspicion—or at least so undermined Jones' credibility—that counsel's omission created a "'substantial'" risk of "a different result." *Cullen* v. *Pinholster*, 563 U. S. 170, 189 (2011). In fact, Hines reasons that, "had [he] not been found with Mrs. Jenkins' car, *Jones* would have been the primary suspect." Brief in Opposition 17 (emphasis added).

Our analysis is straightforward too. Because a Tennessee court considered and rejected Hines' theory, a federal court "shall not" grant a writ of habeas corpus unless the earlier decision took an "unreasonable" view of the facts or law. §2254(d). This "standard is difficult to meet." *Harrington* v. *Richter*, 562 U. S. 86, 102 (2011). The term "unreasonable" refers not to "ordinary error" or even to circumstances where the petitioner offers "a strong case for relief," but rather to "'extreme malfunctions in the state criminal justice syste[m].'" *Ibid.* In other words, a federal court may intrude on a State's "'sovereign power to punish offenders'" only when a decision "was so lacking in justification . . . beyond any possibility for fairminded disagreement." *Id.*, at 103.

If this rule means anything, it is that a federal court must carefully consider all the reasons and evidence supporting the state court's decision. After all, there is no way to hold

that a decision was "lacking in justification" without identifying—let alone rebutting—all of the justifications. *Ibid.* Any other approach would allow a federal court to "'essentially evaluat[e] the merits *de novo*'" by omitting inconvenient details from its analysis. *Shinn*, 592 U. S., at 119; see also *Richter*, 562 U. S., at 102–103.

The Sixth Circuit did precisely that. Nowhere in its 10-page discussion of Hines' theory did the majority consider the substantial evidence linking him to the crime: His flight in a bloody shirt; his possession of the victim's keys, wallet, and car; his recurring association with knives; or his ever-changing stories about tussling with imaginary assailants. 814 Fed. Appx., at 933–942. The court instead focused on all the reasons why it thought Jones "could have" been a viable alternative suspect. *E. g.*, *id.*, at 938–942. And rather than engage with the "dissent['s] recount[ing of] th[e] evidence" against Hines, the majority simply promised that it had "carefully considered" this proof before summarily dismissing it as "not overwhelming." *Id.*, at 939.

Had the Sixth Circuit properly considered the entire record, it would have had little trouble deferring to the Tennessee court's conclusion that Hines suffered no prejudice regarding his conviction or sentence. Again, the critical question was not whether the Sixth Circuit *itself* could see a "'substantial' . . . likelihood of a different result" had Hines' attorney taken a different approach. *Cullen*, 563 U. S., at 189. All that mattered was whether the *Tennessee court*, notwithstanding its substantial "latitude to reasonably determine that a defendant has not [shown prejudice]," still managed to blunder so badly that every fairminded jurist would disagree. *Knowles* v. *Mirzayance*, 556 U. S. 111, 123 (2009).

It did not. The Tennessee court reasonably looked to the substantial evidence of Hines' guilt. *Hines*, 2004 WL 1567120, *27–*28. And it reasonably rejected the "'far-fetched'" possibility that Jones committed and self-reported

a gruesome murder, in the presence of a witness, at a place where he was well known to the staff. *Ibid.* In light of this straightforward, commonsense analysis, the Sixth Circuit had no license to hypothesize an alternative theory of the crime in which Jones became a suspect 35 years after the fact—much less rely on that fanciful theory to grant relief.*

Similarly untenable was the Sixth Circuit's backstop theory that a more aggressive attorney could have changed the result by casting doubt on Jones' credibility. 814 Fed. Appx., at 940. As an initial matter, this conjecture ignores that Jones' brief testimony about discovering the body did not indicate that *Hines* was the culprit. Ample other evidence was what did that. Perhaps in light of this obvious disjuncture, the Sixth Circuit's analysis of why an attack on Jones' credibility would have been productive ultimately circled back to the majority's main assumption "that Jones was a viable alternative suspect." *Id.*, at 941. Regardless, to the extent Jones' credibility actually mattered, the jury already had several good reasons to be skeptical—for example, his peculiar tale of discovering the body; the insinuations of Hines' attorney; and the discrepancies between Jones' exact description of finding the body and the account of the first responders. None of these made a difference.

III

The Sixth Circuit had no reason to revisit the decision of the Tennessee court, much less ignore the ample evidence supporting that court's conclusion. We grant the petition

*Even on its own terms, there is little merit to the Sixth Circuit's speculation that a jury who heard Jones' full story might have blamed him instead of Hines. After all, the story Jones told at trial was in many ways *more* suspicious than the truth. According to his initial account, Jones fortuitously stopped by the motel, hung around outside, and then stumbled upon the body. All without a witness to verify his actions. The jury heard this tale—and Hines' attorney stressed its oddities—yet found that Hines was the murderer. A federal court cannot now claim that the truth would have made a difference.

for a writ of certiorari and respondent's motion to proceed *in forma pauperis*, and we reverse the judgment of the Court of Appeals.

It is so ordered.

JUSTICE SOTOMAYOR dissents.

Syllabus

FACEBOOK, INC. *v.* DUGUID ET AL.

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

No. 19–511. Argued December 8, 2020—Decided April 1, 2021

The Telephone Consumer Protection Act of 1991 (TCPA) proscribes abusive telemarketing practices by, among other things, restricting certain communications made with an "automatic telephone dialing system." The TCPA defines such "autodialers" as equipment with the capacity both "to store or produce telephone numbers to be called, using a random or sequential number generator," and to dial those numbers. 47 U. S. C. § 227(a)(1). Petitioner Facebook, Inc., maintains a social media platform that, as a security feature, allows users to elect to receive text messages when someone attempts to log in to the user's account from a new device or browser. Facebook sent such texts to Noah Duguid, alerting him to login activity on a Facebook account linked to his telephone number, but Duguid never created that account (or any account on Facebook). Duguid tried without success to stop the unwanted messages, and eventually brought a putative class action against Facebook. He alleged that Facebook violated the TCPA by maintaining a database that stored phone numbers and programming its equipment to send automated text messages. Facebook countered that the TCPA does not apply because the technology it used to text Duguid did not use a "random or sequential number generator." The Ninth Circuit disagreed, holding that § 227(a)(1) applies to a notification system like Facebook's that has the capacity to dial automatically stored numbers.

Held: To qualify as an "automatic telephone dialing system" under the TCPA, a device must have the capacity either to store a telephone number using a random or sequential number generator, or to produce a telephone number using a random or sequential number generator. Pp. 402–409.

(a) This case turns on whether the clause "using a random or sequential number generator" in § 227(a)(1)(A) modifies both of the two verbs that precede it ("store" and "produce"), as Facebook contends, or only the closest one ("produce"), as maintained by Duguid. The most natural reading of the text and other aspects of § 227(a)(1)(A) confirm Facebook's view. First, in an ordinary case, the "series-qualifier canon" instructs that a modifier at the end of a series of nouns or verbs applies to the entire series. Here, that canon indicates that the modifying phrase "using a random or sequential number generator" qualifies both

antecedent verbs, "store" and "produce." Second, the modifying phrase immediately follows a concise, integrated clause ("store or produce telephone numbers to be called"), which uses the word "or" to connect two verbs that share a common direct object ("telephone numbers to be called"). Given this structure, it would be odd to apply the modifier to just one part of the cohesive clause. Third, the comma in § 227(a)(1)(A) separating the modifying phrase from the antecedents suggests that the qualifier applies to all of the antecedents, instead of just the nearest one. Pp. 402–404.

Duguid's insistence that a limiting clause should ordinarily be read as modifying only the phrase that it immediately follows (the so-called "rule of the last antecedent") does not help his cause for two reasons. First, the Court has declined to apply that rule in the specific context where, as here, the modifying clause appears after an integrated list. *Jama* v. *Immigration and Customs Enforcement*, 543 U. S. 335, 344, n. 4. Second, the last antecedent before the clause at issue in § 227(a)(1)(A) is not "produce," as Duguid argues, but rather "telephone numbers to be called." P. 404.

(b) The statutory context confirms that the TCPA's autodialer definition excludes equipment that does not use a random or sequential number generator. Congress found autodialer technology harmful because autodialers can dial emergency lines randomly or tie up all of the sequentially numbered phone lines at a single entity. Facebook's interpretation of § 227(a)(1)(A) better matches the scope of the TCPA to these specific concerns. Duguid's interpretation, on the other hand, would encompass any equipment that stores and dials telephone numbers. Pp. 405–406.

(c) Duguid's other counterarguments do not overcome the clear commands of the statute's text and broader context. First, he claims that his interpretation best accords with the "sense" of the text. It would make little sense however, to classify as autodialers all equipment with the capacity to store and dial telephone numbers, including virtually all modern cell phones. Second, Duguid invokes the "distributive canon," which provides that a series of antecedents and consequents should be distributed to one another based on how they most naturally relate in context. But that canon is less suited here because there is only one consequent to match to two antecedents, and in any event, the modifying phrase naturally relates to both antecedents. Third, Duguid broadly construes the TCPA's privacy-protection goals. But despite Congress' general concern about intrusive telemarketing practices, Congress ultimately chose a precise autodialer definition. Finally, Duguid argues that a random or sequential number generator is a "senescent technol-

ogy," *i. e.*, one likely to become outdated quickly. That may or may not be the case, but either way, this Court cannot rewrite the TCPA to update it for modern technology. Congress' chosen definition of an autodialer requires that the equipment in question must use a random or sequential number generator. That definition excludes equipment like Facebook's login notification system, which does not use such technology. Pp. 406–408.

926 F. 3d 1146, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, BREYER, KAGAN, GORSUCH, KAVANAUGH, and BARRETT, JJ., joined. ALITO, J., filed an opinion concurring in the judgment, *post*, p. 409.

Paul D. Clement argued the cause for petitioner. With him on the briefs were *Erin E. Murphy*, *Kasdin M. Mitchell*, *Lauren N. Beebe*, *Andrew B. Clubok*, *Roman Martinez*, and *Susan E. Engel*.

Jonathan Y. Ellis argued the cause for the United States as *amicus curiae* supporting petitioner. With him on the briefs were *Acting Solicitor General Wall*, *Deputy Solicitor General Stewart*, *Sopan Joshi*, *Mark B. Stern*, and *Michael S. Raab*.

Bryan A. Garner argued the cause for respondents. With him on the brief were *Sergei Lemberg*, *Karolyne H. C. Garner*, *Scott L. Nelson*, and *Allison M. Zieve*.*

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*Briefs of *amici curiae* urging reversal were filed for the Chamber of Commerce of the United States of America et al. by *Shay Dvoretzky* and *Thomas Pinder*; for Healthcare Companies by *Maxwell V. Pritt*; for The Home Depot, Inc., by *Keith Bradley*, *William P. Barnette*, *Ben W. Thorpe*, and *Benjamin Beaton;* for the Life Insurance Direct Marketing Association et al. by *Ernesto R. Palomo* and *Brian I. Hays*; for Midland Credit Management, Inc., by *Zachary C. Schauf* and *Amy M. Gallegos*; for Portfolio Recovery Associates, LLC, by *Misha Tseytlin*; for the Professional Association for Customer Engagement et al. by *Michele A. Shuster*, *Joshua O. Stevens*, and *Karl H. Koster*; for Quicken Loans, LLC, by *William M. Jay*, *Brooks R. Brown*, and *Andrew Kim*; for the Retail Litigation Center, Inc., et al. by *Joseph R. Palmore*, *Meredith C. Slawe*, *Michael W. McTigue, Jr.*, *Deborah R. White*, and *Angelo I. Amador*; for Salesforce.com, Inc., by

JUSTICE SOTOMAYOR delivered the opinion of the Court.

The Telephone Consumer Protection Act of 1991 (TCPA) proscribes abusive telemarketing practices by, among other things, imposing restrictions on making calls with an "automatic telephone dialing system." As defined by the TCPA, an "automatic telephone dialing system" is a piece of equip-

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Mark A. Perry; and for the Washington Legal Foundation by *Corbin K. Barthold* and *Cory L. Andrews*.

Briefs of *amici curiae* urging affirmance were filed for the State of North Carolina et al. by *Joshua H. Stein*, Attorney General of North Carolina, *Ryan Y. Park*, Solicitor General, *Nicholas S. Brod*, Assistant Solicitor General, by *Curtis T. Hill, Jr.*, Attorney General of Indiana, *Thomas M. Fisher*, Solicitor General, *Kian J. Hudson*, Deputy Solicitor General, and *Julia C. Payne*, Deputy Attorney General, and by the Attorneys General and other officials for their respective jurisdictions as follows: *Clyde Sniffen, Jr.*, Acting Attorney General of Alaska, *Mark Brnovich* of Arizona, *Leslie Rutledge* of Arkansas, *Xavier Becerra* of California, *Philip J. Weiser* of Colorado, *William Tong* of Connecticut, *Kathleen Jennings* of Delaware, *Karl A. Racine* of the District of Columbia, *Clare E. Connors* of Hawaii, *Lawrence G. Wasden* of Idaho, *Kwame Raoul* of Illinois, *Thomas J. Miller* of Iowa, *Derek Schmidt* of Kansas, *Daniel Cameron* of Kentucky, *Jeff Landry* of Louisiana, *Aaron M. Frey* of Maine, *Brian E. Frosh* of Maryland, *Maura Healey* of Massachusetts, *Dana Nessel* of Michigan, *Keith Ellison* of Minnesota, *Lynn Fitch* of Mississippi, *Aaron D. Ford* of Nevada, *Gordon J. MacDonald* of New Hampshire, *Gurbir S. Grewal* of New Jersey, *Letitia James* of New York, *Wayne Stenehjem* of North Dakota, *Dave Yost* of Ohio, *Mike Hunter* of Oklahoma, *Ellen F. Rosenblum* of Oregon, *Josh Shapiro* of Pennsylvania, *Peter F. Neronha* of Rhode Island, *Herbert H. Slatery III* of Tennessee, *Thomas J. Donovan, Jr.*, of Vermont, *Mark R. Herring* of Virginia, *Robert W. Ferguson* of Washington, and *Eric J. Wilson*, Deputy Attorney General of Wisconsin; for the Electronic Privacy Information Center et al. by *Alan Butler*; for Main Street Alliance by *John A. Yanchunis*; for the National Consumer Law Center et al. by *Tara Twomey*; for John McCurley et al. by *Abbas Kazerounian*; for Dr. Henning Schulzrinne by *Kris Skaar*; and for 21 Members of Congress by *Keith J. Keogh*.

Briefs of *amici curiae* were filed for the Credit Union National Association, Inc., by *Julian R. Ellis, Jr.*, and *Michael H. Pryor*; and for "On-Demand" Technology Platforms by *Albert Giang*, *Michael D. Roth*, and *Anne M. Voigts*.

ment with the capacity both "to store or produce telephone numbers to be called, using a random or sequential number generator," and to dial those numbers. 47 U. S. C. §227(a)(1). The question before the Court is whether that definition encompasses equipment that can "store" and dial telephone numbers, even if the device does not "us[e] a random or sequential number generator." It does not. To qualify as an "automatic telephone dialing system," a device must have the capacity either to store a telephone number using a random or sequential generator or to produce a telephone number using a random or sequential number generator.

I

A

In 1991, Congress passed the TCPA to address "the proliferation of intrusive, nuisance calls" to consumers and businesses from telemarketers. §2, ¶¶1, 6, 105 Stat. 2394, note following 47 U. S. C. §227. Advances in automated technology made it feasible for companies to execute large-scale telemarketing campaigns at a fraction of the prior cost, dramatically increasing customer contacts. Infamously, the development of "robocall" technology allowed companies to make calls using artificial or prerecorded voices, obviating the need for live human callers altogether.

This case concerns "automatic telephone dialing systems" (hereinafter autodialers), which revolutionized telemarketing by allowing companies to dial random or sequential blocks of telephone numbers automatically. Congress found autodialer technology to be uniquely harmful. It threatened public safety by "seizing the telephone lines of public emergency services, dangerously preventing those lines from being utilized to receive calls from those needing emergency services." H. R. Rep. No. 102–317, p. 24 (1991). Indeed, due to the sequential manner in which they could generate numbers, autodialers could simultaneously tie up all the lines

of any business with sequentially numbered phone lines. Nor were individual consumers spared: Autodialers could reach cell phones, pagers, and unlisted numbers, inconveniencing consumers and imposing unwanted fees.[1] *Ibid.*

Against this technological backdrop, Congress made it unlawful to make certain calls "using any automatic telephone dialing system" to "emergency telephone line[s]," to "guest room[s] or patient room[s] of a hospital," or "to any telephone number assigned to a paging service [or] cellular telephone service" without the "prior express consent of the called party." 47 U. S. C. §227(b)(1)(A).[2] The TCPA creates a private right of action for persons to sue to enjoin unlawful uses of autodialers and to recover up to $1,500 per violation or three times the plaintiffs' actual monetary losses. §227(b)(3).

B

Petitioner Facebook, Inc., maintains a social media platform with an optional security feature that sends users "login notification" text messages when an attempt is made to access their Facebook account from an unknown device or browser. If necessary, the user can then log into Facebook and take action to secure the account. To opt in to this service, the user must provide and verify a cell phone number to which Facebook can send messages.

In 2014, respondent Noah Duguid received several login-notification text messages from Facebook, alerting him that someone had attempted to access the Facebook account asso-

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[1] At the time Congress enacted the TCPA, most cellular providers charged users not only for outgoing calls but also for incoming calls. See *In re Rules and Regulations Implementing Telephone Consumer Protection Act of 1991*, 18 FCC Rcd. 14014, 14115 (2003).

[2] Neither party disputes that the TCPA's prohibition also extends to sending unsolicited text messages. See *Campbell-Ewald Co.* v. *Gomez*, 577 U. S. 153, 156 (2016). We therefore assume that it does without considering or resolving that issue.

ciated with his phone number from an unknown browser. But Duguid has never had a Facebook account and never gave Facebook his phone number.[3] Unable to stop the notifications, Duguid brought a putative class action against Facebook. He alleged that Facebook violated the TCPA by maintaining a database that stored phone numbers and programming its equipment to send automated text messages to those numbers each time the associated account was accessed by an unrecognized device or web browser.

Facebook moved to dismiss the suit, arguing primarily that Duguid failed to allege that Facebook used an autodialer because he did not claim Facebook sent text messages to numbers that were randomly or sequentially generated. Rather, Facebook argued, Duguid alleged that Facebook sent targeted, individualized texts to numbers linked to specific accounts. The U. S. District Court for the Northern District of California agreed and dismissed Duguid's amended complaint with prejudice. 2017 WL 635117, *4–*5 (Feb. 16, 2017).

The United States Court of Appeals for the Ninth Circuit reversed. As relevant here, the Ninth Circuit held that Duguid had stated a claim under the TCPA by alleging that Facebook's notification system automatically dialed stored numbers. An autodialer, the Court of Appeals held, need not be able to use a random or sequential generator to store numbers; it need only have the capacity to "'store numbers to be called'" and "'to dial such numbers automatically.'" 926 F. 3d 1146, 1151 (2019) (quoting *Marks* v. *Crunch San Diego, LLC*, 904 F. 3d 1041, 1053 (CA9 2018)).

We granted certiorari to resolve a conflict among the Courts of Appeals regarding whether an autodialer must have the capacity to generate random or sequential phone

[3] As Facebook explains, it is possible that Duguid was assigned a recycled cell phone number that previously belonged to a Facebook user who opted to receive login notifications.

numbers.[4] 591 U. S. 1028 (2020). We now reverse the Ninth Circuit's judgment.

II

Section 227(a)(1) defines an autodialer as:

> "equipment which has the capacity—
>
> "(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and
>
> "(B) to dial such numbers."

Facebook argues the clause "using a random or sequential number generator" modifies both verbs that precede it ("store" and "produce"), while Duguid contends it modifies only the closest one ("produce"). We conclude that the clause modifies both, specifying how the equipment must either "store" or "produce" telephone numbers. Because Facebook's notification system neither stores nor produces numbers "using a random or sequential number generator," it is not an autodialer.

A

We begin with the text. Congress defined an autodialer in terms of what it must do ("store or produce telephone numbers to be called") and how it must do it ("using a random or sequential number generator"). The definition uses a familiar structure: a list of verbs followed by a modifying clause. Under conventional rules of grammar, "[w]hen 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

[4] Compare 926 F. 3d 1146, 1151–1152 (CA9 2019); *Duran* v. *La Boom Disco, Inc.*, 955 F. 3d 279, 290 (CA2 2020); and *Allan* v. *Pennsylvania Higher Educ. Assistance Agency*, 968 F. 3d 567, 579–580 (CA6 2020), with *Gadelhak* v. *AT&T Servs., Inc.*, 950 F. 3d 458, 468 (CA7 2020) (Barrett, J., for the court); *Glasser* v. *Hilton Grand Vacations Co.*, 948 F. 3d 1301, 1306–1307 (CA11 2020); and *Dominguez* v. *Yahoo, Inc.*, 894 F. 3d 116, 119 (CA3 2018).

(2012) (Scalia & Garner) (quotation modified). The Court often applies this interpretative rule, usually referred to as the "series-qualifier canon." See *Paroline* v. *United States*, 572 U. S. 434, 447 (2014) (citing *Porto Rico Railway, Light & Power Co.* v. *Mor*, 253 U. S. 345, 348 (1920)); see also *United States* v. *Bass*, 404 U. S. 336, 339–340 (1971). This canon generally reflects the most natural reading of a sentence. Imagine if a teacher announced that "students must not complete or check any homework to be turned in for a grade, using online homework-help websites." It would be strange to read that rule as prohibiting students from completing homework altogether, with or without online support.

Here, the series-qualifier canon recommends qualifying both antecedent verbs, "store" and "produce," with the phrase "using a random or sequential number generator." That recommendation produces the most natural construction, as confirmed by other aspects of § 227(a)(1)(A)'s text.

To begin, the modifier at issue immediately follows a concise, integrated clause: "store or produce telephone numbers to be called." See *Cyan, Inc.* v. *Beaver County Employees Retirement Fund*, 583 U. S. 416, 440 (2018). The clause "hangs together as a unified whole," *ibid.* using the word "or" to connect two verbs that share a common direct object, "telephone numbers to be called." It would be odd to apply the modifier ("using a random or sequential number generator") to only a portion of this cohesive preceding clause.

This interpretation of § 227(a)(1)(A) also "heed[s] the commands of its punctuation." *United States Nat. Bank of Ore.* v. *Independent Ins. Agents of America, Inc.*, 508 U. S. 439, 454 (1993). Recall that the phrase "using a random or sequential number generator" follows a comma placed after the phrase "store or produce telephone numbers to be called." As several leading treatises explain, "'[a] qualifying phrase separated from antecedents by a comma is evidence that the qualifier is supposed to apply to all the antecedents instead

of only to the immediately preceding one.'" W. Eskridge, Interpreting Law: A Primer on How To Read Statutes and the Constitution 67–68 (2016); see also 2A N. Singer & S. Singer, Sutherland Statutes and Statutory Construction § 47:33, pp. 499–500 (rev. 7th ed. 2014); Scalia & Garner 161–162. The comma in § 227(a)(1)(A) thus further suggests that Congress intended the phrase "using a random or sequential number generator" to apply equally to both preceding elements.

Contrary to Duguid's view, this interpretation does not conflict with the so-called "rule of the last antecedent." Under that rule, "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 (2003); see also *Lockhart* v. *United States*, 577 U. S. 347, 351 (2016). The rule of the last antecedent is context dependent. This Court has declined to apply the rule where, like here, the modifying clause appears after an integrated list. See *Jama* v. *Immigration and Customs Enforcement*, 543 U. S. 335, 344, n. 4 (2005) (collecting cases). Moreover, even if the rule of the last antecedent were relevant here, it would provide no help to Duguid. The last antecedent before "using a random or sequential number generator" is not "produce," as Duguid needs it to be, but rather "telephone numbers to be called." There is "no grammatical basis," *Cyan*, 583 U. S., at 441, for arbitrarily stretching the modifier back to include "produce," but not so far back as to include "store."

In sum, Congress' definition of an autodialer requires that in all cases, whether storing or producing numbers to be called, the equipment in question must use a random or sequential number generator. This definition excludes equipment like Facebook's login notification system, which does not use such technology.[5]

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[5] JUSTICE ALITO notes that he "agree[s] with much of the Court's analysis," as well as its ultimate conclusion about the interpretive question before us, yet he concurs in the judgment only. *Post,* at 409–410. His

B

The statutory context confirms that the autodialer definition excludes equipment that does not "us[e] a random or sequential number generator." 47 U. S. C. §227(a)(1)(A). Consider the TCPA's restrictions on the use of autodialers. As previously noted, §227(b)(1) makes it unlawful to use an autodialer to call certain "emergency telephone line[s]" and lines "for which the called party is charged for the call." §227(b)(1)(A). It also makes it unlawful to use an autodialer "in such a way that two or more telephone lines of a multiline business are engaged simultaneously." §227(b)(1)(D). These prohibitions target a unique type of telemarketing equipment that risks dialing emergency lines randomly or tying up all the sequentially numbered lines at a single entity.

Expanding the definition of an autodialer to encompass any equipment that merely stores and dials telephone numbers would take a chainsaw to these nuanced problems when Congress meant to use a scalpel. Duguid's interpretation of an autodialer would capture virtually all modern cell phones,

apprehension appears to stem from what he sees as the Court's "heavy reliance" on the series-qualifier canon. *Id.*, at 410. Such canons, he argues, are "not inflexible rules." *Post*, at 413. On that point, we agree: Linguistic canons are tools of statutory interpretation whose usefulness depends on the particular statutory text and context at issue. That may be all JUSTICE ALITO seeks to prove with his discussion and list of "sentences that clearly go against the canon," *post*, at 411. (That the grammatical structure of every example he provides is materially dissimilar from that of the clause at issue in this case proves the point.) But to the extent that he suggests that such canons have no role to play in statutory interpretation, or that resolving difficult interpretive questions is a simple matter of applying the "common understanding" of those "familiar with the English language," *post*, at 411–412, we disagree. Difficult ambiguities in statutory text will inevitably arise, despite the best efforts of legislators writing in "English prose," *post*, at 413. Courts should approach these interpretive problems methodically, using traditional tools of statutory interpretation, in order to confirm their assumptions about the "common understanding" of words.

which have the capacity to "store . . . telephone numbers to be called" and "dial such numbers." § 227(a)(1). The TCPA's liability provisions, then, could affect ordinary cell phone owners in the course of commonplace usage, such as speed dialing or sending automated text message responses. See § 227(b)(3) (authorizing a $500 fine per violation, increased to $1,500 if the sender acted "willfully" or "knowingly").[6]

III

Duguid's counterarguments cannot overcome the clear commands of § 227(a)(1)(A)'s text and the statutory context. The crux of Duguid's argument is that the autodialer definition calls for a construction that accords with the "sense" of the text. Brief for Respondents 11, and n. 3. It makes the most "sense," Duguid insists, to apply the phrase "using a random or sequential number generator" to modify only "produce," which, unlike the verb "store," is closely connected to the noun "generator." Dictionary definitions of "generator," for instance, regularly include the word "produce," which carries a very different meaning than "store." Duguid also claims that, at the time of the TCPA's enactment, the technical meaning of a "random number generator" invoked ways of producing numbers, not means of storing them.

Perhaps Duguid's interpretive approach would have some appeal if applying the traditional tools of interpretation led to a "linguistically impossible" or contextually implausible

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[6] Duguid contends that ordinary cell phones are not autodialers under his interpretation because they cannot dial phone numbers automatically and instead rely on human intervention. But all devices require some human intervention, whether it takes the form of programming a cell phone to respond automatically to texts received while in "do not disturb" mode or commanding a computer program to produce and dial phone numbers at random. We decline to interpret the TCPA as requiring such a difficult line-drawing exercise around how much automation is too much.

outcome. *Encino Motorcars, LLC* v. *Navarro*, 584 U. S. 79, 88 (2018); see also *Advocate Health Care Network* v. *Stapleton*, 581 U. S. 468, 480 (2017) (noting that a "sense of inconceivability" might "urg[e] readers to discard usual rules of interpreting text"). Duguid makes a valiant effort to prove as much, but ultimately comes up short. It is true that, as a matter of ordinary parlance, it is odd to say that a piece of equipment "stores" numbers using a random number "generator." But it is less odd as a technical matter. Indeed, as early as 1988, the U. S. Patent and Trademark Office issued patents for devices that used a random number generator to store numbers to be called later (as opposed to using a number generator for immediate dialing).[7] Brief for Professional Association for Customer Engagement et al. as *Amici Curiae* 15–21. At any rate, Duguid's interpretation is contrary to the ordinary reading of the text and, by classifying almost all modern cell phones as autodialers, would produce an outcome that makes even less sense.

Duguid's reliance on the distributive canon fails for similar reasons. That canon provides that "[w]here a sentence contains several antecedents and several consequents," courts should "read them distributively and apply the words to the subjects which, by context, they seem most properly to relate." 2A Singer, Sutherland Statutes and Statutory Con-

[7] Duguid argues that such a device would necessarily "produce" numbers using the same generator technology, meaning "store or" in § 227(a)(1)(A) is superfluous. "It is no superfluity," however, for Congress to include both functions in the autodialer definition so as to clarify the domain of prohibited devices. *BFP* v. *Resolution Trust Corporation*, 511 U. S. 531, 544, n. 7 (1994). For instance, an autodialer might use a random number generator to determine the order in which to pick phone numbers from a preproduced list. It would then store those numbers to be dialed at a later time. See Brief for Professional Association for Customer Engagement et al. as *Amici Curiae* 19. In any event, even if the storing and producing functions often merge, Congress may have "employed a belt and suspenders approach" in writing the statute. *Atlantic Richfield Co.* v. *Christian*, 590 U. S. 1, 14, n. 5 (2020).

struction § 47:26, at 448. Set aside for a moment that the canon's relevance is highly questionable given there are two antecedents (store and produce) but only one consequent modifier (using a random or sequential number generator). See *Encino Motorcars*, 584 U. S., at 87 ("[T]he distributive canon has the most force when the statute allows for one-to-one matching"). As just explained, the consequent "using a random or sequential number generator" properly relates to both antecedents.

Duguid next turns to legislative purpose, but he merely gestures at Congress' "broad privacy-protection goals." Brief for Respondents 28 (emphasizing that Congress prohibited calls made using an autodialer without "'prior express consent of the called party'" (quoting 47 U. S. C. § 227(b)(1)(A))). That Congress was broadly concerned about intrusive telemarketing practices, however, does not mean it adopted a broad autodialer definition. Congress expressly found that the use of random or sequential number generator technology caused unique problems for business, emergency, and cellular lines. See *supra*, at 399–400. Unsurprisingly, then, the autodialer definition Congress employed includes only devices that use such technology, and the autodialer prohibitions target calls made to such lines. See § 227(b)(1)(A).[8] The narrow statutory design, therefore, does not support Duguid's broad interpretation.

Duguid last warns that accepting Facebook's interpretation will "unleash" a "torrent of robocalls." Brief for Respondents 38 (quotation modified). As Duguid sees it, the thrust of congressional action since the TCPA's enactment has been to restrict nuisance calls. Because technology "adapt[s] to change," Duguid argues, the TCPA must be

[8] By contrast, Congress did impose broader prohibitions elsewhere in the TCPA. See, *e. g.*, 47 U. S. C. §§ 227(b)(1)(A) and (B) (prohibiting "artificial or prerecorded voice" calls, irrespective of the type of technology used).

treated as an "'agile tool.'" *Id.*, at 38, 41. To this end, Duguid asks this Court to focus not on whether a device has the "senescent technology," *id.*, at 41, of random or sequential number generation but instead on whether it has the "capacity to dial numbers without human intervention," *id.*, at 39 (internal quotation marks omitted).

To begin with, Duguid greatly overstates the effects of accepting Facebook's interpretation. The statute separately prohibits calls using "an artificial or prerecorded voice" to various types of phone lines, including home phones and cell phones, unless an exception applies. See 47 U. S. C. §§227(b)(1)(A) and (B). Our decision does not affect that prohibition. In any event, Duguid's quarrel is with Congress, which did not define an autodialer as malleably as he would have liked. "Senescent" as a number generator (and perhaps the TCPA itself) may be, that is no justification for eschewing the best reading of §227(a)(1)(A). This Court must interpret what Congress wrote, which is that "using a random or sequential number generator" modifies both "store" and "produce."

* * *

We hold that a necessary feature of an autodialer under §227(a)(1)(A) is the capacity to use a random or sequential number generator to either store or produce phone numbers to be called. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE ALITO, concurring in the judgment.

I agree with the Court that an "automatic telephone dialing system," as defined in the Telephone Consumer Protection Act of 1991, must have the capacity to "store . . . telephone numbers" by "using a random or sequential number generator." 47 U. S. C. §227(a)(1)(A). I also agree with

much of the Court's analysis and the analysis in several Court of Appeals decisions on this question. See *Gadelhak* v. *AT&T Servs., Inc.*, 950 F. 3d 458, 463–468 (CA7 2020); *Glasser* v. *Hilton Grand Vacations Co.*, 948 F. 3d 1301, 1306–1312 (CA11 2020).

I write separately to address the Court's heavy reliance on one of the canons of interpretation that have come to play a prominent role in our statutory interpretation cases. Cataloged in a treatise written by our former colleague Antonin Scalia and Bryan A. Garner, counsel for respondents in this case, these canons are useful tools, but it is important to keep their limitations in mind. This may be especially true with respect to the particular canon at issue here, the "series-qualifier" canon.

According to the majority's recitation of this canon, "'[w]hen 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.'" *Ante*, at 402 (quoting A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 147 (2012) (Reading Law)).*

The Court refers to this canon as a "rul[e] of grammar." *Ante*, at 402. Yet the Scalia-Garner treatise makes it clear that interpretive canons "are not 'rules' of interpretation in any strict sense but presumptions about what an intelligently produced text conveys." Reading Law 51. (Even grammar, according to Mr. Garner, is ordinarily just "an attempt to describe the English language as it is actually used." B. Garner, The Chicago Guide to Grammar, Usage, and Punctuation 1 (2016)). And Reading Law goes out of

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*As set out in Reading Law 147, this canon also applies when the modifier precedes the series of verbs or nouns.

Some scholars have claimed that "nobody proposed [the series-qualifier] canon until Justice Scalia pioneered it" in Reading Law. Baude & Sachs, The Law of Interpretation, 130 Harv. L. Rev. 1079, 1125 (2017) (internal quotation marks omitted; emphasis deleted).

its way to emphasize the limitations of the series-qualifier canon, warning:

> "Perhaps more than most of the other canons, [the series-qualifier canon] is highly sensitive to context. Often the sense of the matter prevails: *He went forth and wept bitterly* does not suggest that he went forth bitterly." Reading Law 150.

The italicized sentence—an English translation of a sentence in the New Testament, Matthew 26:75—is not only grammatical; it is perfectly clear. No one familiar with the English language would fail to understand it—even though its meaning is contrary to the one suggested by the series-qualifier canon.

The Court writes that the series-qualifier canon "generally reflects the most natural reading of a sentence," *ante*, at 403, and *maybe* that is so. But cf. *Lockhart* v. *United States*, 577 U. S. 347, 351 (2016) (relying on "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"). But it is very easy to think of sentences that clearly go against the canon:

> "At the Super Bowl party, she ate, drank, and cheered raucously."
> "On Saturday, he relaxes and exercises vigorously."
> "When his owner comes home, the dog wags his tail and barks loudly."
> "It is illegal to hunt rhinos and giraffes with necks longer than three feet."
> "She likes to swim and run wearing track spikes."

In support of its treatment of the series-qualifier canon, the Court offers this example of a sentence in which the natural reading corresponds with the interpretation suggested by the canon: "[S]tudents must not complete or check any homework to be turned in for a grade, using online homework-help websites." *Ante*, at 403. I certainly agree

that the adverbial phrase in this sentence ("using online homework-help websites") modifies both of the verbs it follows ("complete" and "check") and not just the latter. But that understanding has little to do with syntax and everything to do with our common understanding that teachers do not want to prohibit students from doing homework. We can see this point clearly if we retain the same syntax but replace the verb "complete" with any number of other verbs that describe something a teacher is not likely to want students to do, say, "ignore," "overlook," "discard," "lose," "neglect," "forget," "destroy," "throw away," or "incinerate" their homework. The concept of "using online homework-help websites" to do any of those things would be nonsensical, and no reader would interpret the sentence to have that meaning—even though that is what the series-qualifier canon suggests.

The strength and validity of an interpretive canon is an empirical question, and perhaps someday it will be possible to evaluate these canons by conducting what is called a corpus linguistics analysis, that is, an analysis of how particular combinations of words are used in a vast database of English prose. See generally Lee & Mouritsen, Judging Ordinary Meaning, 127 Yale L. J. 788 (2018). If the series-qualifier canon were analyzed in this way, I suspect we would find that series qualifiers sometimes modify all the nouns or verbs in a list and sometimes modify just the last noun or verb. It would be interesting to see if the percentage of sentences in the first category is high enough to justify the canon. But no matter how the sentences with the relevant structure broke down, it would be surprising if "the sense of the matter" did not readily reveal the meaning in the great majority of cases. Reading Law 150.

That is just my guess. Empirical evidence might prove me wrong, but that is not what matters. The important point is that interpretive canons attempt to identify the way in which "a reasonable reader, fully competent in the lan-

guage, would have understood the text at the time it was issued." *Id.*, at 33. To the extent that interpretive canons accurately describe how the English language is generally used, they are useful tools. But they are not inflexible rules.

Appellate judges spend virtually every working hour speaking, listening to, reading, or writing English prose. Statutes are written in English prose, and interpretation is not a technical exercise to be carried out by mechanically applying a set of arcane rules. Canons of interpretation can help in figuring out the meaning of troublesome statutory language, but if they are treated like rigid rules, they can lead us astray. When this Court describes canons as rules or quotes canons while omitting their caveats and limitations, we only encourage the lower courts to relegate statutory interpretation to a series of if-then computations. No reasonable reader interprets texts that way.

For these reasons, I respectfully concur in the judgment.

Syllabus

FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* PROMETHEUS RADIO PROJECT ET AL.

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

No. 19–1231. Argued January 19, 2021—Decided April 1, 2021*

Under its broad authority to regulate broadcast media in the public interest, the Federal Communications Commission (FCC) has long maintained several ownership rules that limit the number of radio stations, television stations, and newspapers that a single entity may own in a given market. Section 202(h) of the Telecommunications Act of 1996 directs the FCC to review its media ownership rules every four years and to repeal or modify any rules that no longer serve the public interest.

In 2017, the FCC concluded that three of its ownership rules were no longer necessary to promote competition, localism, or viewpoint diversity. The Commission further concluded that the record evidence did not suggest that repealing or modifying those three rules was likely to harm minority and female ownership. Based on that analysis, the agency decided to repeal two of those three ownership rules and modify the third. Prometheus Radio Project and several other public interest and consumer advocacy groups (collectively, Prometheus) petitioned for review, arguing that the FCC's decision to repeal or modify the three rules was arbitrary and capricious under the Administrative Procedure Act (APA). The Third Circuit vacated the FCC's reconsideration order, holding that the record did not support the agency's conclusion that the rule changes would have minimal effect on minority and female ownership.

Held: The FCC's decision to repeal or modify the three ownership rules was not arbitrary and capricious for purposes of the APA. In analyzing whether to repeal or modify its existing ownership rules, the FCC considered the record evidence and reasonably concluded that the three ownership rules at issue were no longer necessary to serve the agency's public interest goals of competition, localism, and viewpoint diversity, and that the rule changes were not likely to harm minority and female ownership.

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*Together with No. 19–1241, *National Association of Broadcasters et al.* v. *Prometheus Radio Project et al.*, also on certiorari to the same court.

Syllabus

In challenging the FCC's order, Prometheus argues that the Commission's assessment of the likely impact of the rule changes on minority and female ownership rested on flawed data. But the FCC acknowledged the gaps in the data sets it relied on, and noted that, despite its repeated requests for additional data, it had received no countervailing evidence suggesting that changing the three ownership rules was likely to harm minority and female ownership. Prometheus also asserts that the FCC ignored two studies submitted by a commenter that purported to show that past relaxations of the ownership rules had led to decreases in minority and female ownership levels. But the record demonstrates that the FCC considered those studies and simply interpreted them differently.

In assessing the effects of the rule changes on minority and female ownership, the FCC did not have perfect empirical or statistical data. But that is not unusual in day-to-day agency decisionmaking within the Executive Branch. The APA imposes no general obligation on agencies to conduct or commission their own empirical or statistical studies. And nothing in the Telecommunications Act requires the FCC to conduct such studies before exercising its discretion under Section 202(h). In light of the sparse record on minority and female ownership and the FCC's findings with respect to competition, localism, and viewpoint diversity, the Court cannot say that the agency's decision to repeal or modify the ownership rules fell outside the zone of reasonableness for purposes of the APA. Pp. 422–428.

939 F. 3d 567, reversed.

KAVANAUGH, J., delivered the opinion for a unanimous Court. THOMAS, J., filed a concurring opinion, *post*, p. 428.

Deputy Solicitor General Stewart argued the cause for petitioners in No. 19–1231. With him on the briefs were *Acting Solicitor General Wall*, *Assistant Attorney General Delrahim*, *Deputy Assistant Attorney General Murray*, *Austin L. Raynor*, *Thomas M. Johnson, Jr.*, and *Jacob M. Lewis.*

Helgi C. Walker argued the cause for petitioners in No. 19–1241. With her on the briefs filed in both cases were *Eve Klindera Reed*, *Craig E. Gilmore*, *Kevin F. King*, *Rafael Reyneri*, and *Jeetander T. Dulani.*

Ruthanne M. Deutsch argued the cause for respondents in both cases. With her on the brief were *Hyland Hunt*,

Cheryl A. Leanza, *Brian Wolfman*, *Andrew Jay Schwartzman*, *Dennis Lane*, and *Marcia S. Cohen*.†

JUSTICE KAVANAUGH delivered the opinion of the Court.

Under the Communications Act of 1934, the Federal Communications Commission possesses broad authority to regulate broadcast media in the public interest. Exercising that

†Briefs of *amici curiae* urging reversal in both cases were filed for the ABC Television Affiliates Association et al. by *Mark J. Prak* and *Jason E. Rademacher;* for the Americans for Prosperity Foundation by *Michael Pepson* and *Eric R. Bolinder*; for Gray Television, Inc. by *David E. Mills*, *Elizabeth B. Prelogar*, *Robert M. McDowell*, and *Barrett J. Anderson*; for the Phoenix Center for Advanced Legal & Economic Public Policy Studies by *Lawrence J. Spiwak*; for the Southeastern Legal Foundation by *Tyler R. Green* and *Jeffrey M. Harris*; and for TechFreedom by *Corbin K. Barthold*.

Briefs of *amici curiae* urging affirmance in both cases were filed for the District of Columbia et al. by *Karl A. Racine*, Attorney General of the District of Columbia, *Loren L. Alikhan*, Solicitor General, *Caroline S. Van Zile*, Principal Deputy Solicitor General, *Carl J. Schifferle*, Deputy Solicitor General, and *Samson J. Schatz*, Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Xavier Becerra* of California, *Philip J. Weiser* of Colorado, *William Tong* of Connecticut, *Kathleen Jennings* of Delaware, *Clare E. Connors* of Hawaii, *Kwame Raoul* of Illinois, *Aaron M. Frey* of Maine, *Brian E. Frosh* of Maryland, *Maura Healey* of Massachusetts, *Dana Nessel* of Michigan, *Keith Ellison* of Minnesota, *Aaron D. Ford* of Nevada, *Gurbir S. Grewal* of New Jersey, *Hector Balderas* of New Mexico, *Letitia James* of New York, *Joshua H. Stein* of North Carolina, *Ellen F. Rosenblum* of Oregon, *Josh Shapiro* of Pennsylvania, *Peter F. Neronha* of Rhode Island, *Thomas J. Donovan, Jr.*, of Vermont, *Mark R. Herring* of Virginia, and *Robert W. Ferguson* of Washington; for the American Statistical Association by *Elie Ian Herman;* for Former FCC Commissioners by *Christopher J. Wright*; for the Leadership Conference on Civil and Human Rights et al. by *Peter K. Stris*, *Elizabeth Rogers Brannen*, *Vanita Gupta*, *Corrine Yu*, *Michael Zubrensky*, *Michael N. Donofrio*, and *Bridget Asay*; for Media Law and Policy Scholars by *James Davy*; for Members of Congress by *Elizabeth B. Wydra* and *Brianne J. Gorod*; for Professors of Communications Law et al. by *Catherine J. K. Sandoval*, *pro se*; for Public Citizen by *Nandan M. Joshi*, *Allison M. Zieve*, and *Scott L. Nelson*; for Public Knowledge by *Harold Feld*; and for Sue Wilson et al. by *Richard Faulkner*.

statutory authority, the FCC has long maintained strict ownership rules. The rules limit the number of radio stations, television stations, and newspapers that a single entity may own in a given market. Under Section 202(h) of the Telecommunications Act of 1996, the FCC must review the ownership rules every four years, and must repeal or modify any ownership rules that the agency determines are no longer in the public interest.

In a 2017 order, the FCC concluded that three of its ownership rules no longer served the public interest. The FCC therefore repealed two of those rules—the Newspaper/Broadcast Cross-Ownership Rule and the Radio/Television Cross-Ownership Rule. And the Commission modified the third—the Local Television Ownership Rule. In conducting its public interest analysis under Section 202(h), the FCC considered the effects of the rules on competition, localism, viewpoint diversity, and minority and female ownership of broadcast media outlets. The FCC concluded that the three rules were no longer necessary to promote competition, localism, and viewpoint diversity, and that changing the rules was not likely to harm minority and female ownership.

A non-profit advocacy group known as Prometheus Radio Project, along with several other public interest and consumer advocacy groups, petitioned for review, arguing that the FCC's decision was arbitrary and capricious under the Administrative Procedure Act. In particular, Prometheus contended that the record evidence did not support the FCC's predictive judgment regarding minority and female ownership. Over Judge Scirica's dissent, the U. S. Court of Appeals for the Third Circuit agreed with Prometheus and vacated the FCC's 2017 order.

On this record, we conclude that the FCC's 2017 order was reasonable and reasonably explained for purposes of the APA's deferential arbitrary-and-capricious standard. We therefore reverse the judgment of the Third Circuit.

I

The Federal Communications Commission possesses broad statutory authority to regulate broadcast media "as public convenience, interest, or necessity requires." 47 U. S. C. § 303; see also § 309(a). Exercising that authority, the FCC has historically maintained several strict ownership rules. The rules limit the number of radio stations, television stations, and newspapers that a single entity may own in a given market. See *FCC* v. *National Citizens Comm. for Broadcasting*, 436 U. S. 775, 780–781, and nn. 1–3, 783–784 (1978). The FCC has long explained that the ownership rules seek to promote competition, localism, and viewpoint diversity by ensuring that a small number of entities do not dominate a particular media market. See *id.*, at 780–781, 808; *In re 2002 Biennial Regulatory Review—Notice of Proposed Rulemaking*, 17 FCC Rcd. 18503, 18515–18527 (2002).

This case concerns three of the FCC's current ownership rules. The first is the Newspaper/Broadcast Cross-Ownership Rule. Initially adopted in 1975, that rule prohibits a single entity from owning a radio or television broadcast station and a daily print newspaper in the same media market. The second is the Radio/Television Cross-Ownership Rule. Initially adopted in 1970, that rule limits the number of combined radio stations and television stations that an entity may own in a single market. And the third is the Local Television Ownership Rule. Initially adopted in 1964, that rule restricts the number of local television stations that an entity may own in a single market.

The FCC adopted those rules in an early-cable and pre-Internet age when media sources were more limited. By the 1990s, however, the market for news and entertainment had changed dramatically. Technological advances led to a massive increase in alternative media options, such as cable television and the Internet. Those technological advances

challenged the traditional dominance of daily print newspapers, local radio stations, and local television stations. See, *e. g.*, *In re 2002 Biennial Regulatory Review—Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd. 13620, 13647–13667 (2003) (2002 Review).

In 1996, Congress passed and President Clinton signed the Telecommunications Act. To ensure that the FCC's ownership rules do not remain in place simply through inertia, Section 202(h) of the Act directs the FCC to review its ownership rules every four years to determine whether those rules remain "necessary in the public interest as the result of competition." § 202(h), 110 Stat. 111–112, as amended § 629, 118 Stat. 99–100, note following 47 U. S. C. § 303. After conducting each quadrennial Section 202(h) review, the FCC "shall repeal or modify" any rules that it determines are "no longer in the public interest." *Ibid.* Section 202(h) establishes an iterative process that requires the FCC to keep pace with industry developments and to regularly reassess how its rules function in the marketplace. See *In re 2002 Biennial Regulatory Review—Report*, 18 FCC Rcd. 4726, 4732 (2003).

Soon after Section 202(h) was enacted, the FCC stated that the agency's traditional public interest goals of promoting competition, localism, and viewpoint diversity would inform its Section 202(h) analyses. 2002 Review, 18 FCC Rcd., at 13627; see also *In re 1998 Biennial Regulatory Review*, 15 FCC Rcd. 11058, 11061–11062 (2000). The FCC has also said that, as part of its public interest analysis under Section 202(h), it would assess the effects of the ownership rules on minority and female ownership. 2002 Review, 18 FCC Rcd., at 13627, 13634, and n. 67; see also *In re 2010 Quadrennial Regulatory Review—Notice of Inquiry*, 25 FCC Rcd. 6086, 6106 (2010); cf. *In re Amendment of Section 73.3555 [formerly Sections 73.35, 73.240 and 73.636] of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations*, 100 F. C. C. 2d 74, 97 (1985).

Since 2002, the Commission has repeatedly sought to change several of its ownership rules—including the three rules at issue here—as part of its Section 202(h) reviews. See 2002 Review, 18 FCC Rcd., at 13622–13623 (eliminating strict caps on newspaper/broadcast and radio/television cross-ownership and modifying the Local Television Ownership Rule); *In re 2006 Quadrennial Regulatory Review—Report and Order and Order on Reconsideration*, 23 FCC Rcd. 2010, 2021 (2008) (relaxing the Newspaper/Broadcast Cross-Ownership Rule). But for the last 17 years, the Third Circuit has rejected the FCC's efforts as unlawful under the APA. See *Prometheus Radio Project* v. *FCC*, 373 F. 3d 372 (2004); *Prometheus Radio Project* v. *FCC*, 652 F. 3d 431 (2011); see also 824 F. 3d 33 (2016). As a result, those three ownership rules exist in substantially the same form today as they did in 2002.[1]

The current dispute arises out of the FCC's most recent attempt to change its ownership rules. In its quadrennial Section 202(h) order issued in 2016, the FCC concluded that the Newspaper/Broadcast Cross-Ownership, Radio/Television Cross-Ownership, and Local Television Ownership Rules remained necessary to serve the agency's public interest goals of promoting "competition and a diversity of viewpoints in local markets." *In re 2014 Quadrennial Regulatory Review—Second Report and Order*, 31 FCC Rcd. 9864, 9865 (2016) (2016 Order). The FCC therefore chose to retain the existing rules with only "minor modifications." *Ibid.*

[1] The FCC currently has two other ownership rules that are subject to its quadrennial Section 202(h) review: (1) the Local Radio Ownership Rule, which limits the number of radio stations that an entity may own in a single market, and (2) the Dual Network Rule, which prohibits mergers among the top four television broadcast networks (ABC, CBS, Fox, and NBC). The FCC has one additional ownership rule, the National Television Ownership Rule, which is not subject to review under Section 202(h). That rule limits the number of television stations that a single entity may own nationwide. Those other rules are not at issue in this case.

A number of groups sought reconsideration of the 2016 Order. In 2017, the Commission (with a new Chair) granted reconsideration. *In re 2014 Quadrennial Regulatory Review—Order on Reconsideration and Notice of Proposed Rulemaking*, 32 FCC Rcd. 9802 (2017) (2017 Reconsideration Order). On reconsideration, the FCC performed a new public interest analysis. The agency explained that rapidly evolving technology and the rise of new media outlets—particularly cable and Internet—had transformed how Americans obtain news and entertainment, rendering some of the ownership rules obsolete. See, *e. g.*, *id.*, at 9811–9815. As a result of those market changes, the FCC concluded that the three ownership rules no longer served the agency's public interest goals of fostering competition, localism, and viewpoint diversity. *Id.*, at 9810, 9830, and n. 197, 9835–9836. The FCC explained that permitting efficient combinations among radio stations, television stations, and newspapers would benefit consumers. See *id.*, at 9819, 9830, 9835–9836.

The Commission also considered the likely impact of any changes to its ownership rules on minority and female ownership. The FCC concluded that repealing or modifying the three ownership rules was not likely to harm minority and female ownership. *Id.*, at 9822–9824, 9830–9831, 9839–9840.[2]

Based on its analysis of the relevant factors, the FCC decided to repeal the Newspaper/Broadcast and Radio/Television Cross-Ownership Rules, and to modify the Local Television Ownership Rule. *Id.*, at 9803.

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[2] 2017 Reconsideration Order, 32 FCC Rcd., at 9822 ("We find that repealing the" Newspaper/Broadcast Cross-Ownership Rule "will not have a material impact on minority and female ownership"); *id.*, at 9830 ("[W]e find that the record fails to demonstrate that eliminating the Radio/Television Cross-Ownership Rule is likely to harm minority and female ownership"); *id.*, at 9839 ("We find that the modifications we adopt to the Local Television Ownership Rule are not likely to harm minority and female ownership").

Prometheus and several other public interest and consumer advocacy groups petitioned for review, arguing that the FCC's decision to repeal or modify those three rules was arbitrary and capricious under the APA.

The Third Circuit vacated the 2017 Reconsideration Order. The court did not dispute the FCC's conclusion that those three ownership rules no longer promoted the agency's public interest goals of competition, localism, and viewpoint diversity. But the court held that the record did not support the FCC's conclusion that the rule changes would "have minimal effect" on minority and female ownership. 939 F. 3d 567, 584 (2019). The court directed the Commission, on remand, to "ascertain on record evidence" the effect that any rule changes were likely to have on minority and female ownership, "whether through new empirical research or an in-depth theoretical analysis." *Id.*, at 587.

Judge Scirica dissented in relevant part. In his view, the FCC reasonably analyzed the record evidence and made a reasonable predictive judgment that the rule changes were not likely to harm minority and female ownership. *Id.*, at 590.

The FCC and a number of industry groups petitioned for certiorari. We granted certiorari. 591 U. S. 1080 (2020).

II

In the 2017 Reconsideration Order, the FCC changed three of its ownership rules because it concluded that the rules were no longer in the public interest. In particular, the FCC concluded that the rules no longer served the agency's goals of fostering competition, localism, and viewpoint diversity, and further concluded that repealing or modifying the rules was not likely to harm minority and female ownership.

Prometheus argues that the FCC's predictive judgment regarding minority and female ownership was arbitrary and capricious under the APA. See 5 U. S. C. § 706(2)(A). We disagree.

The APA's arbitrary-and-capricious standard requires that agency action be reasonable and reasonably explained. Judicial review under that standard is deferential, and a court may not substitute its own policy judgment for that of the agency. A court simply ensures that the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision. See *FCC* v. *Fox Television Stations, Inc.*, 556 U. S. 502, 513–514 (2009); *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 43 (1983); see also *FCC* v. *WNCN Listeners Guild*, 450 U. S. 582, 596 (1981).

In its 2017 Reconsideration Order, the FCC analyzed the significant record evidence of dramatic changes in the media market over the past several decades. See, *e. g.*, 32 FCC Rcd., at 9803, 9807, 9825, 9834. After thoroughly examining that record evidence, the Commission determined that the Newspaper/Broadcast Cross-Ownership, Radio/Television Cross-Ownership, and Local Television Ownership Rules were no longer necessary to serve the agency's public interest goals of promoting competition, localism, and viewpoint diversity. The FCC therefore concluded that repealing the two cross-ownership rules and modifying the Local Television Ownership Rule would fulfill "the mandates of Section 202(h)" and "deliver on the Commission's promise to adopt broadcast ownership rules that reflect the present, not the past." *Id.*, at 9803.

In analyzing whether to repeal or modify those rules, the FCC also addressed the possible impact on minority and female ownership. The Commission explained that it had sought public comment on the issue of minority and female ownership during multiple Section 202(h) reviews, but "no arguments were made" that would lead the FCC to conclude that the existing rules were "necessary to protect or promote minority and female ownership." *Id.*, at 9822; see also *id.*, at 9831, 9839; cf. *In re 2006 Quadrennial Regulatory Review—Further Notice of Proposed Rulemaking*, 21 FCC

Rcd. 8834, 8837 (2006) (soliciting evidence on minority and female ownership); *In re 2010 Quadrennial Regulatory Review—Notice of Inquiry*, 25 FCC Rcd., at 6106, 6108–6109 (same); *In re 2014 Quadrennial Regulatory Review—Further Notice of Proposed Rulemaking and Report and Order*, 29 FCC Rcd. 4371, 4460, and n. 595, 4470 (2014) (same). Indeed, the FCC stated that it had received several comments suggesting the opposite—namely, comments suggesting that eliminating the Newspaper/Broadcast Cross-Ownership Rule "potentially could *increase* minority ownership of newspapers and broadcast stations." 2017 Reconsideration Order, 32 FCC Rcd., at 9823 (emphasis added). Based on the record, the Commission concluded that repealing or modifying the three rules was not likely to harm minority and female ownership. See *id.*, at 9822, 9830, 9839.

In challenging the 2017 Reconsideration Order in this Court, Prometheus does not seriously dispute the FCC's conclusion that the existing rules no longer serve the agency's public interest goals of competition, localism, and viewpoint diversity. Rather, Prometheus targets the FCC's assessment that altering the ownership rules was not likely to harm minority and female ownership.

Prometheus asserts that the FCC relied on flawed data in assessing the likely impact of changing the rules on minority and female ownership. Prometheus further argues that the FCC ignored superior data available in the record.

Prometheus initially points to two data sets on which the FCC relied in the 2016 Order and the 2017 Reconsideration Order. Those data sets measured the number of minority-owned media outlets before and after the Local Television Ownership Rule and the Local Radio Ownership Rule were relaxed in the 1990s. Together, the data sets showed a slight decrease in the number of minority-owned media outlets immediately after the rules were relaxed, followed by an eventual increase in later years. The 2016 Order cited

those data sets and explained that the number of minority-owned media outlets had increased over time. But the FCC added that there was no record evidence suggesting that past changes to the ownership rules had caused minority ownership levels to increase. See 31 FCC Rcd., at 9894–9895; *id.*, at 9911–9912.

In the 2017 Reconsideration Order, the FCC referred to the 2016 Order's analysis of those data sets. The FCC stated that data in the record suggested that the previous relaxations of the Local Television Ownership and Local Radio Ownership Rules "have not resulted in reduced levels of minority and female ownership." 2017 Reconsideration Order, 32 FCC Rcd., at 9831; see also *id.*, at 9823; *id.*, at 9839. The FCC further explained that "no party" had "presented contrary evidence or a compelling argument demonstrating why" altering the rules would have a different impact today. *Id.*, at 9839; see also *id.*, at 9823, and n. 138; *id.*, at 9831, and n. 201. The FCC therefore concluded that "the record provides no information to suggest" that eliminating or modifying the existing rules would harm minority and female ownership. *Id.*, at 9831; see also *id.*, at 9823; *id.*, at 9839.

Prometheus insists that the FCC's numerical comparison was overly simplistic and that the data sets were materially incomplete. But the FCC acknowledged the gaps in the data. And despite repeatedly asking for data on the issue, the Commission received no other data on minority ownership and no data at all on female ownership levels. See 2016 Order, 31 FCC Rcd., at 9894–9895, nn. 211–212; *id.*, at 9911, n. 325; 2017 Reconsideration Order, 32 FCC Rcd., at 9822–9823, and n. 138 (incorporating 2016 Order's discussion of data sets); *id.*, at 9831, and n. 201 (same); *id.*, at 9839, and n. 243 (same). The FCC therefore relied on the data it had (and the absence of any countervailing evidence) to predict that changing the rules was not likely to harm minority and female ownership.

Prometheus also asserts that countervailing—and superior—evidence was in fact in the record, and that the FCC ignored that evidence. Prometheus identifies two studies submitted to the FCC by Free Press, a media reform group. Those studies purported to show that past relaxations of the ownership rules and increases in media market concentration had led to decreases in minority and female ownership levels. According to Prometheus, the Free Press studies undercut the FCC's prediction that its rule changes were unlikely to harm minority and female ownership.

The FCC did not ignore the Free Press studies. The FCC simply interpreted them differently. In particular, in the 2016 Order, the Commission explained that its data sets and the Free Press studies showed the same long-term increase in minority ownership after the Local Television Ownership and Local Radio Ownership Rules were relaxed. 31 FCC Rcd., at 9895, and n. 215; *id.*, at 9912, and n. 329. Moreover, as counsel for Prometheus forthrightly acknowledged at oral argument, the Free Press studies were purely backward-looking, and offered no statistical analysis of the likely future effects of the FCC's proposed rule changes on minority and female ownership. See Tr. of Oral Arg. 75–76.

In short, the FCC's analysis was reasonable and reasonably explained for purposes of the APA's deferential arbitrary-and-capricious standard. The FCC considered the record evidence on competition, localism, viewpoint diversity, and minority and female ownership, and reasonably concluded that the three ownership rules no longer serve the public interest. The FCC reasoned that the historical justifications for those ownership rules no longer apply in today's media market, and that permitting efficient combinations among radio stations, television stations, and newspapers would benefit consumers. The Commission further explained that its best estimate, based on the sparse record evidence, was that repealing or modifying the three rules

at issue here was not likely to harm minority and female ownership. The APA requires no more.[3]

To be sure, in assessing the effects on minority and female ownership, the FCC did not have perfect empirical or statistical data. Far from it. But that is not unusual in day-to-day agency decisionmaking within the Executive Branch. The APA imposes no general obligation on agencies to conduct or commission their own empirical or statistical studies. Cf. *Fox Television*, 556 U. S., at 518–520; *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.*, 435 U. S. 519, 524 (1978). And nothing in the Telecommunications Act (or any other statute) requires the FCC to conduct its own empirical or statistical studies before exercising its discretion under Section 202(h). Here, the FCC repeatedly asked commenters to submit empirical or statistical studies on the relationship between the ownership rules and minority and female ownership. See, *e. g.*, *In re 2014 Quadrennial Review*, 29 FCC Rcd., at 4460, and n. 595. Despite those requests, no commenter produced such evidence indicating that changing the rules was likely to harm minority and female ownership. In the absence of additional data from commenters, the FCC made a reasonable predictive judgment based on the evidence it had. See *State Farm*, 463 U. S., at 52.

In light of the sparse record on minority and female ownership and the FCC's findings with respect to competition, localism, and viewpoint diversity, we cannot say that the

[3] Because we hold that the Third Circuit's judgment must be reversed under ordinary principles of arbitrary-and-capricious review, we need not reach the industry petitioners' alternative argument that the text of Section 202(h) does not authorize (or at least does not require) the FCC to consider minority and female ownership when the Commission conducts its quadrennial reviews. We also need not consider the industry petitioners' related argument that the FCC, in its Section 202(h) review of an ownership rule, may not consider minority and female ownership unless promoting minority and female ownership was part of the FCC's original basis for that ownership rule.

agency's decision to repeal or modify the ownership rules fell outside the zone of reasonableness for purposes of the APA.[4]

* * *

We reverse the judgment of the U. S. Court of Appeals for the Third Circuit.

It is so ordered.

JUSTICE THOMAS, concurring.

As the Court correctly holds, the Federal Communications Commission's orders were not arbitrary and capricious. Based on the record evidence available, the FCC reasonably concluded that modifying its broadcast ownership rules would not harm minority and female ownership of broadcast media. I write separately to note another, independent reason why reversal is warranted: The Third Circuit improperly imposed nonstatutory procedural requirements on the FCC by forcing it to consider ownership diversity in the first place.

The FCC had no obligation to consider minority and female ownership. Nothing in § 202(h) of the Telecommunications Act of 1996 directs the FCC to consider rates of minority and female ownership. See note following 47 U. S. C. § 303 (requiring the FCC simply to consider "'the public interest as the result of competition'"). Nor could any court force the FCC to consider ownership diversity: Courts have no authority to impose "judge-made procedur[es]" on agen-

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[4] The Third Circuit also vacated the FCC's separate 2018 Incubator Order and the 2016 Order's definition of "eligible entity." But the Third Circuit did not offer any independent reasons for doing so. Instead, it vacated those agency actions based solely on its conclusion that the FCC failed to adequately consider minority and female ownership in the 2017 Reconsideration Order. Because we reverse the judgment of the Third Circuit as to the 2017 Reconsideration Order, it follows that the Third Circuit's judgment as to the Incubator Order and "eligible entity" definition is also reversed.

cies. *Perez* v. *Mortgage Bankers Assn.*, 575 U. S. 92, 102 (2015).

Disregarding these limits, the Third Circuit imposed on the FCC a nonstatutory requirement to consider minority and female ownership. The court first did so in 2004 when it vacated the FCC's modification of its Local Television Ownership Rule, faulting the FCC for "failing to mention anything about the effect this change would have on potential minority station owners." 373 F. 3d 372, 420 (2004). It then directed the FCC on remand to "consider . . . proposals for enhancing ownership opportunities for women and minorities." *Id.*, at 435, n. 82; accord, 652 F. 3d 431, 471 (2011) (reiterating that its "prior remand requir[ed] the Commission to consider the effect of its rules on minority and female ownership"). Repeating this error in 2016, the Third Circuit mandated that the FCC, "in addition to §202(h)'s requirement . . . , include a determination about 'the effect of the rules on minority and female ownership.'" 824 F. 3d 33, 54, n. 13 (quoting 652 F. 3d, at 471; brackets omitted).

Respondents try to defend the Third Circuit's ruling by noting that the FCC has previously discussed ownership diversity when considering its ownership rules. They contend that the FCC thus believed that a purpose of those rules is to promote minority and female ownership. And because an agency cannot "depart from a prior policy *sub silentio*," *FCC* v. *Fox Television Stations, Inc.*, 556 U. S. 502, 515 (2009), they argue that the FCC either had to consider ownership diversity or expressly repudiate its prior policy. That argument fails because the FCC's ownership rules—unlike some of its *non*ownership rules—were never designed to foster ownership diversity.

From its infancy, the FCC has generally focused on consumers, not producers. The year after it was established, the agency that would later become the FCC made clear that "'emphasis must be first and foremost on the interest, the convenience, and the necessity of the listening public, and not

on the interest, convenience, or necessity of the individual broadcaster.'" *FCC* v. *Pottsville Broadcasting Co.*, 309 U. S. 134, 139, n. 2 (1940) (quoting a 1928 agency document).

The FCC kept true to that design when promulgating ownership rules. For example, when it created the Newspaper/Broadcast Cross-Ownership Rule at issue here, the agency explained that its "ownership rules rest on two foundations: the twin goals of diversity of viewpoints and economic competition," and that viewpoint diversity is the "higher" policy. 50 F. C. C. 2d 1046, 1074 (1975); see also 22 F. C. C. 2d 306, 313, ¶25 (1970) (stating that the "principal purpose" of the Radio/Television Cross-Ownership Rule is "promot[ing] diversity of viewpoints" and a secondary purpose is "promot[ing] competition"). To these two consumer-focused goals, the FCC has also added a third: localism. 18 FCC Rcd. 13620, 13624, ¶8, 13645, ¶81 (2003). None of these objectives advances demographic diversity of owners for the sake of owners.

To be sure, the FCC has sometimes considered minority and female ownership of broadcast media when discussing ownership rules. Time after time, however, it has viewed those forms of diversity not "as policy goals in and of themselves, but as proxies for viewpoint diversity." 17 FCC Rcd. 18503, 18519, ¶41, and n. 116, 18521, ¶50 (2002); accord, *e. g.*, 18 FCC Rcd., at 13774, ¶389 ("diversity of ownership promotes diversity of viewpoints"); *id.*, at 13636, ¶51, 13760, ¶355 (similar); 10 FCC Rcd. 2788, ¶¶1–2 (1995) ("promoting minority ownership of broadcasting and cable television facilities serves to enhance the diversity of viewpoints presented"). The FCC has also said that ownership diversity "promote[s] competition." *Id.*, at 2789, ¶6; accord, 22 F. C. C. 2d, at 313, ¶25. And although the FCC has occasionally used language that, read in isolation, could suggest a free-standing goal of promoting ownership diversity, *e. g.*, 17 FCC Rcd., at 18521, ¶50 ("[T]he Commission has historically used

the ownership rules to foster ownership by diverse groups, such as minorities, women and small businesses"), these comments must be viewed in the light of the FCC's repeated statements that "the core Commission goal [is] maximizing the diversity of points of view available to the public" and that "promoting minority [and female] ownership of broadcasting and cable television facilities serves" this core goal. 10 FCC Rcd., at 2788, ¶¶1–2.

Even while trying to abide by the Third Circuit's improper mandate, the FCC clarified in this proceeding that it considered ownership diversity a potential means to pursue viewpoint diversity, not a freestanding goal of its ownership rules. To cite just a few examples, in its 2016 order the FCC explained that it "has a long history of promulgating rules and regulations intended to promote diversity of ownership among broadcast licensees, and *thereby* foster a diversity of voices." App. 335 (emphasis added). It afforded certain companies waivers from various rules to "serve our broader goal of diversity of ownership, and *thus* viewpoint diversity." *Id.*, at 337 (emphasis added). And it noted that it could not promulgate a race-conscious regulation without first "demonstrat[ing] a connection between minority ownership and viewpoint diversity" that would "satisfy strict scrutiny." *Id.*, at 397; cf. *Metro Broadcasting, Inc.* v. *FCC*, 497 U. S. 547, 566–568 (1990) (upholding race-conscious "minority ownership policies" because they were "substantially related to the achievement of . . . broadcast diversity"—*i. e.*, viewpoint diversity), overruled by *Adarand Constructors, Inc.* v. *Peña*, 515 U. S. 200, 227 (1995) (requiring strict scrutiny for "all racial classifications").

The Third Circuit erred by disregarding this history. For example, when the FCC modified its Local Television Ownership Rule in 2003, the court faulted the FCC for "failing to mention anything about the effect this change would have on potential minority station owners." 373 F. 3d, at 420.

But as with its other ownership rules, the stated "objectives" for that rule were fostering viewpoint diversity and competition. 14 FCC Rcd. 12903, 12910–12912, ¶¶15, 17 (1999).[1]

Here, as in 2003, once the FCC determined that none of its policy objectives for ownership rules—viewpoint diversity, competition, and localism—justified retaining its rules, the FCC was free to modify or repeal them without considering ownership diversity. Indeed, the FCC has long been clear that "it would be inappropriate to retain multiple ownership regulations for the sole purpose of promoting minority ownership." 100 F. C. C. 2d 74, 94, ¶45 (1985). The Third Circuit had no authority to require the FCC to consider minority and female ownership. So in future reviews, the FCC is under no obligation to do so.[2]

[1] The FCC reiterated these objectives when modifying the rule in 2003. 18 FCC Rcd. 13620, 13708, ¶¶225–226.

[2] The FCC has recently questioned the validity of the assumption that ownership diversity promotes viewpoint diversity. 32 FCC Rcd. 9802, 9810, ¶15, n. 49 (2017). Its previous acceptance of that assumption in no way precludes the FCC from rejecting it in the future.

Syllabus

FLORIDA *v.* GEORGIA

ON EXCEPTIONS TO SECOND REPORT OF SPECIAL MASTER

No. 142, Orig. Argued February 22, 2021—Decided April 1, 2021

This case involves a dispute between Florida and Georgia concerning the proper apportionment of interstate waters. Florida brought an original action against Georgia alleging that its upstream neighbor consumes more than its fair share of water from interstate rivers in the Apalachicola-Chattahoochee-Flint River Basin. Florida claims that Georgia's overconsumption of Basin waters caused low flows in the Apalachicola River which seriously harmed Florida's oyster fisheries and river ecosystem. The first Special Master appointed by the Court to assess Florida's claims recommended dismissal of Florida's complaint. The Court disagreed with the Special Master's analysis of the threshold question of redressability, and remanded for the Special Master to make definitive findings and recommendations on several issues, including: whether Florida had proved any serious injury caused by Georgia; the extent to which reducing Georgia's water consumption would increase Apalachicola River flows; and the extent to which any increased Apalachicola flows would redress Florida's injuries. *Florida* v. *Georgia*, 585 U. S. 803. Following supplemental briefing and oral argument, the Special Master then reviewing the case produced an 81-page report recommending that the Court deny Florida relief. Relevant here, the Special Master concluded that Florida failed to prove by clear and convincing evidence that Georgia's alleged overconsumption caused serious harm either to Florida's oyster fisheries or to its river wildlife and plant life. Florida filed exceptions.

Held: Florida's exceptions to the Special Master's Report are overruled, and the case is dismissed. Pp. 438–444.

(a) The Court has original jurisdiction to equitably apportion interstate waters between States. Given the competing sovereign interests in such cases, a complaining State bears a burden much greater than does a private party seeking an injunction. Florida concedes that it cannot obtain an equitable apportionment here unless it first proves by clear and convincing evidence a serious injury caused by Georgia. The Court conducts an independent review of the record in ruling on Florida's exceptions to the Special Master's Report. *Kansas* v. *Nebraska*, 574 U. S. 445, 453. Pp. 438–439.

(b) Florida has not proved by clear and convincing evidence that the collapse of its oyster fisheries was caused by Georgia's overconsumption.

Syllabus

The oyster population in the Bay collapsed in 2012 in the midst of a severe drought. Florida attempts to show that Georgia's alleged unreasonable agricultural water consumption caused reduced river flows, which in turn increased the Bay's salinity, which in turn attracted saltwater oyster predators and disease, decimating the oyster population. Georgia offers contrary evidence that Florida's mismanagement of its fisheries, rather than reduced river flows, caused the decline. Florida's own documents and witnesses reveal that Florida allowed unprecedented levels of oyster harvesting in the years leading to the collapse. And the record points to other potentially relevant factors, including actions of the U. S. Army Corps of Engineers, multiyear droughts, and changing rainfall patterns. The precise causes of the Bay's oyster collapse remain a subject of scientific debate, but the record evidence establishes at most that increased salinity and predation contributed to the collapse of Florida's fisheries, not that Georgia's overconsumption caused the increased salinity and predation. Florida fails to establish that Georgia's overconsumption was a substantial factor contributing to its injury, much less the sole cause. As such the Court need not address the causation standard applicable in equitable-apportionment cases. Pp. 439–443.

(c) Florida also has not proved by clear and convincing evidence that Georgia's overconsumption has harmed river wildlife and plant life by disconnecting tributaries, swamps, and sloughs from the Apalachicola River, thereby drying out important habitats for river species. The Special Master found "a complete lack of evidence" that any river species has suffered or will suffer serious injury from Georgia's alleged overconsumption, Second Report of Special Master 22, and the Court agrees with that conclusion. Pp. 443–444.

Exceptions overruled, and case dismissed.

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

Gregory G. Garre argued the cause for plaintiff. With him on the brief were *Ashley Moody*, Attorney General of Florida, *Amit Agarwal*, Solicitor General, *Philip J. Perry*, *Jamie L. Wine*, and *Abid R. Qureshi*.

Craig S. Primis argued the cause for defendant. With him on the brief were *Christopher M. Carr*, Attorney General of Georgia, *Andrew Pinson*, Solicitor General,

*K. Winn Allen, Devora W. Allon, and Lauren N. Beebe.**

JUSTICE BARRETT delivered the opinion of the Court.

For the second time in three years, we confront a dispute between Florida and Georgia over the proper apportionment of interstate waters. Florida, the downstream State, brought this original action against Georgia, claiming that Georgia consumes more than its fair share of water from an interstate network of rivers. Florida says that Georgia's overconsumption harms its economic and ecological interests, and it seeks a decree requiring Georgia to reduce its consumption.

When the case was last before the Court, we resolved it narrowly and remanded to a Special Master with instructions to make findings and recommendations on additional issues. *Florida* v. *Georgia*, 585 U. S. 803 (2018). On remand, the Special Master recommended that we deny Florida relief for several independent reasons, including that Florida proved no serious injury caused by Georgia's alleged overconsumption.

Based on our independent review of the record, we agree with the Special Master's recommendation. We therefore overrule Florida's exceptions to the Special Master's Report and dismiss the case.

I

This case concerns the Apalachicola-Chattahoochee-Flint River Basin, an area spanning more than 20,000 square miles in Georgia, Florida, and Alabama. The Basin contains three

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*Briefs of *amici curiae* were filed for the United States by *Acting Solicitor General Wall*, *Deputy Solicitor General Kneedler*, *Deputy Assistant Attorney General Grant*, *Frederick Liu*, and *Michael T. Gray*; for the Atlanta Regional Commission et al. by *Lewis B. Jones*; and for Franklin County, Florida Seafood Workers by *Lisa S. Blatt*.

rivers. The Chattahoochee River and the Flint River start in Georgia and empty into Lake Seminole, which straddles the Georgia-Florida border. Both rivers are critical sources of water for Georgia. The Chattahoochee is the primary water supply for the Atlanta metropolitan area, while the Flint supplies irrigation to southwestern Georgia's agricultural industry.

The third river in the Basin is the Apalachicola River. It starts from the southern end of Lake Seminole and flows south through the Florida Panhandle, emptying into the Apalachicola Bay (Bay), near the Gulf of Mexico. The Apalachicola River supports a wide range of river wildlife and plant life in the Florida Panhandle, and its steady supply of fresh water makes the Bay a suitable habitat for oysters. For many years, Florida's oyster fisheries were a cornerstone of the regional economy.

Many factors influence Apalachicola River flows, including precipitation, air temperature, and Georgia's upstream consumption of Basin waters. The U. S. Army Corps of Engineers also plays an important role. The Corps regulates Apalachicola flows by storing water in, and releasing water from, its network of reservoirs in the Basin. In recent years, low flows in the Apalachicola River have become increasingly common during the dry summer and fall months, particularly during droughts.

In 2013, on the heels of the third regional drought in just over a decade, Florida brought this original action against Georgia, seeking an equitable apportionment of the Basin waters. See 28 U. S. C. § 1251(a); U. S. Const., Art. III, § 2. Florida asserts that Georgia's overconsumption of Basin waters causes sustained low flows in the Apalachicola River, which in turn harm its oyster fisheries and river ecosystem. As a remedy, Florida seeks an order requiring Georgia to reduce its consumption of Basin waters. Florida does not seek relief against the Corps.

We granted Florida leave to file its complaint and referred the case to Special Master Ralph Lancaster, Jr. After 18 months of extensive discovery and a 5-week trial, the Special Master issued a report recommending that Florida be denied relief. Although the Special Master assumed for the sake of his analysis that Florida had suffered serious injuries due to Georgia's upstream water use, he determined that it was unnecessary to make definitive findings on those issues because Florida failed to prove by clear and convincing evidence that any remedy would redress its asserted injuries. That was so because a remedial decree would not bind the Corps, which could operate its reservoirs to offset any added streamflow produced by the decree.

On review of Florida's exceptions to the Special Master's Report, we remanded for further proceedings. *Florida* v. *Georgia*, 585 U. S. 803. We concluded that the Special Master's clear and convincing evidence standard for the "'threshold'" question of redressability was "too strict," at least absent further findings. *Id.*, at 820. We then directed the Special Master to make definitive findings and recommendations on several additional issues, including: whether Florida had proved any serious injury caused by Georgia; the extent to which reducing Georgia's water consumption would increase Apalachicola River flows; and the extent to which any increased Apalachicola flows would redress Florida's injuries. *Id.*, at 840.

Soon after our decision in *Florida*, Special Master Lancaster retired, and we appointed Judge Paul Kelly as the Special Master. Following supplemental briefing and oral argument, Special Master Kelly issued an 81-page report recommending, for several independent reasons, that this Court deny Florida relief. Relevant here, the Special Master concluded that Florida failed to prove by clear and convincing evidence that Georgia's alleged overconsumption caused serious harm to Florida's oyster fisheries or its river

wildlife and plant life. Second Report of Special Master 8–25.

Florida again filed exceptions to the Special Master's Report. We must "conduct an independent review of the record, and assume the ultimate responsibility for deciding all matters." *Kansas* v. *Nebraska*, 574 U. S. 445, 453 (2015) (internal quotation marks omitted). Having done so, we overrule Florida's exceptions and adopt the Special Master's recommendation.

II

"This Court has recognized for more than a century its inherent authority, as part of the Constitution's grant of original jurisdiction, to equitably apportion interstate streams between States." *Id.*, at 454. Given the weighty and competing sovereign interests at issue in these cases, "a complaining State must bear a burden that is 'much greater' than the burden ordinarily shouldered by a private party seeking an injunction." *Florida*, 585 U. S., at 816.

Here, Florida must make two showings to obtain an equitable apportionment. First, Florida must prove a threatened or actual injury "of serious magnitude" caused by Georgia's upstream water consumption. See *id.*, at 817, 823–824 (internal quotation marks omitted); *Colorado* v. *New Mexico*, 459 U. S. 176, 187, n. 13 (1982) (*Colorado I*). Second, Florida must show that "the benefits of the [apportionment] substantially outweigh the harm that might result." *Id.*, at 187. Because Florida and Georgia are both riparian States, the "guiding principle" of this analysis is that both States have "an equal right to make a reasonable use" of the Basin waters. *Florida*, 585 U. S., at 815 (emphasis deleted; internal quotation marks omitted).

To resolve this case, we need address only injury and causation. Florida asserts that Georgia's overconsumption of Basin waters caused it two distinct injuries: the collapse of its oyster fisheries and harm to its river ecosystem. Florida does not dispute that it must prove injury and causation by

clear and convincing evidence. See *Colorado I*, 459 U. S., at 187, n. 13. To do so, Florida must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.'" *Colorado* v. *New Mexico*, 467 U. S. 310, 316 (1984) (*Colorado II*).

With Florida's heavy burden in mind, we address its asserted injuries in turn.

A

In 2012, in the midst of a severe drought, the oyster population in the Apalachicola Bay collapsed, causing commercial oyster sales to plummet. By the time of trial, the Bay's fisheries had yet to recover. All agree that this is an injury "of serious magnitude" under our equitable-apportionment precedents. See *New York* v. *New Jersey*, 256 U. S. 296, 309 (1921).

The parties, however, offer competing explanations for the *cause* of the collapse. Florida pins the collapse on Georgia through a multistep causal chain. It argues that Georgia's unreasonable agricultural water consumption caused sustained low flows in the Apalachicola River; that these low flows increased the Bay's salinity; and that higher salinity in the Bay attracted droves of saltwater oyster predators and disease, ultimately decimating the oyster population.

Georgia points to a more direct cause—Florida's mismanagement of its oyster fisheries. According to Georgia, Florida caused the collapse by overharvesting oysters and failing to replace harvested oyster shells. And even if low flows contributed at all, Georgia says, they were driven by climatic changes and other factors, not its upstream consumption.

Of course, the precise causes of the Bay's oyster collapse remain a subject of ongoing scientific debate. As judges, we lack the expertise to settle that debate and do not purport to do so here. Our more limited task is to evaluate the parties' arguments in light of the record evidence and Florida's heavy burden of proof. And on this record, we agree with the Special Master that Florida has failed to carry its burden.

Florida's own documents and witnesses reveal that Florida allowed unprecedented levels of oyster harvesting in the years before the collapse. In 2011 and 2012, oyster harvests from the Bay were larger than in any other year on record. Fla. Exh. 839; 4 Trial Tr. 956; 6 Trial Tr. 1391. That was in part because Florida loosened various harvesting restrictions out of fear—ultimately unrealized—that the Deepwater Horizon oil spill would contaminate its oyster fisheries. 3 Trial Tr. 767–769. A former Florida official, one of Florida's lead witnesses, acknowledged that these management practices "'bent'" Florida's fisheries "'until [they] broke.'" Ga. Exh. 1357, p. 1; 4 Trial Tr. 877.

The record also shows that Florida failed to adequately reshell its oyster bars. Reshelling is a century-old oyster-management practice that involves replacing harvested oyster shells with clean shells, which can serve as habitat for young oysters. *Id.*, at 907–908; 17 Trial Tr. 4390. Yet in the years before the collapse, while Florida was harvesting oysters at a record pace, it was simultaneously reshelling its oyster bars at a historically low rate. See Direct Testimony of Romuald N. Lipcius ¶¶138–151 (Lipcius), and Demos. 15, 16; see also Ga. Exh. 568, p. 5 (recommending that Florida reshell 200 acres per year); 7 Trial Tr. 1692 (Florida reshelled 180 total acres in the 10 years before the collapse).

Georgia's marine ecologist, Dr. Lipcius, demonstrated the stark effects of Florida's increased harvesting and lax reshelling efforts. Analyzing data on oyster densities precollapse and postcollapse, Dr. Lipcius found that mean densities in the Bay's most heavily harvested oyster bars dropped by an average of 78%, while mean densities *increased* by 3% to 13% at bars that either were not heavily harvested or had been reshelled. Lipcius ¶¶41–44. Dr. Lipcius also found negligible differences in salinity among the bars that he analyzed, suggesting that increased salinity did not explain the variance in oyster densities. *Id.*, ¶¶48–51.

Florida does not meaningfully rebut this evidence. Yet Florida nonetheless argues that Georgia's overconsump-

tion—and the consequent increased salinity and predation—was the *sole* cause of the collapse, or at least a substantial factor contributing to it.* But here again, Florida's own witnesses suggest otherwise.

Dr. White, one of Florida's ecology experts, modeled how oyster biomass would have changed at two of the Bay's major oyster bars if Georgia had consumed less water in the years leading up to the collapse. His modeling showed that reducing Georgia's consumption by an amount "similar to the relief that Florida is requesting" in this case would have increased oyster biomass by less than 1.5% in 2012. Updated Pre-Filed Direct Testimony (PFDT) of J. Wilson White 49–51, figs. 14, 15.

Florida does not explain how such minor fluctuations in oyster biomass could have averted the collapse. Instead, Florida points to testimony that increased streamflow would have had "larger" effects on oyster biomass at oyster bars closer to the river's mouth. 7 Trial Tr. 1725; see also *id.*, at 1868–1870. But it was Florida's burden to quantify *how much* larger the effects would have been, and its experts did not model biomass changes at bars near the river. See 6 Trial Tr. 1571.

Other Florida experts reinforced Dr. White's biomass findings. One expert found that salinity reductions of greater than 10 parts per thousand are "required" in order to reduce predation by rock snails—one of the oyster's fiercest predators. Fla. Exh. 797, p. 38; Updated PFDT of Mark Berrigan ¶¶42–43 (Berrigan). Yet according to another Florida expert, salinity throughout the Bay would have declined by substantially *less* than 10 parts per thousand in 2012 even if Georgia had eliminated *all* of its consumption from the Basin. PFDT of Marcia Greenblatt ¶¶4, 27, 30. Together, these findings further undermine the asserted

*We have not specified the causation standard applicable in equitable-apportionment cases. We need not do so here, for Florida has failed to establish a sufficient causal connection under any of the parties' proposed standards.

link between Georgia's consumption and decreased oyster biomass.

In response to this empirical evidence, Florida relies primarily on: (1) testimony from a local oysterman and a former Florida official that they witnessed high salinity and significant oyster predation, including at private oyster bars not subject to overharvesting, PFDT of Thomas L. Ward ¶¶33–37; Berrigan ¶¶44–48; (2) reports by its own agency blaming the collapse in part on salinity and predation, Joint Exhs. 50, 77; (3) a fishery-disaster declaration by the National Oceanic and Atmospheric Administration (NOAA) adopting the conclusion of Florida's agency, Fla. Exh. 413, p. 3; and (4) field experiments conducted by one of Florida's experts in the years *after* the collapse, which purport to demonstrate a link between increased salinity and predation, Updated PFDT of David Kimbro ¶¶63–90.

The fundamental problem with this evidence—a problem that pervades Florida's submission in this case—is that it establishes at most that increased salinity and predation contributed to the collapse, not that *Georgia's overconsumption* caused the increased salinity and predation. None of these witnesses or reports point to Georgia's overconsumption as a significant cause of the high salinity and predation. The NOAA, in fact, primarily blamed "prolonged drought conditions" and the Corps' reservoirs operations—not Georgia's consumption during drought conditions—for the elevated levels of salinity and predation in the Bay. Fla. Exh. 413, pp. 3–4. Other record evidence, moreover, indicates that the unprecedented series of multiyear droughts, as well as changes in seasonal rainfall patterns, may have played a significant role. See PFDT of Dennis Lettenmaier 17, fig. 8; Direct Testimony of Wei Zeng ¶¶144–152. Given these confounding factors, we do not think that Florida's evidence of high salinity and predation overcomes the data and modeling of its own experts, which show that Georgia's consumption had little to no impact on the Bay's oyster population.

Considering the record as a whole, Florida has not shown that it is "highly probable" that Georgia's alleged overconsumption played more than a trivial role in the collapse of Florida's oyster fisheries. See *Colorado II*, 467 U. S., at 316. Florida therefore has failed to carry its burden of proving causation by clear and convincing evidence.

B

Florida also argues that Georgia's overconsumption has harmed river wildlife and plant life by disconnecting tributaries, swamps, and sloughs from the Apalachicola River, thereby drying out important habitats for river species. The Special Master found "a complete lack of evidence" that any river species suffered serious injury from Georgia's alleged overconsumption, and we agree. Second Report of Special Master 22.

In seeking to prove injury, Florida relied primarily on species-specific "harm metrics" developed by Dr. Allan, one of its ecology experts. Dr. Allan established minimum river-flow regimes that he believed necessary for certain species of fish, mussels, and trees to avoid "significant harm" during dry months. Updated PFDT of J. David Allan ¶¶33–61 (Allan). He then sought to quantify the harm to each species by totaling the number of days in which river flows fell below his thresholds. *Id.*, ¶¶62–63.

What Dr. Allan did *not* do, however, is show that his harm metrics did or likely would translate into real-world harm to the species that he studied. Indeed, Dr. Allan provided no data showing that the overall population of *any* river species has declined in recent years. See 2 Trial Tr. 389–392, 395–396. And other evidence casts significant doubt on Dr. Allan's harm metrics. For instance, the U. S. Fish & Wildlife Service found that the population of the fat threeridge mussel—one of the species Dr. Allan analyzed—"appears stable and may be increasing in size." Joint Exh. 168, p. 125; Allan ¶42.

Without stronger evidence of *actual* past or threatened harm to species in the Apalachicola River, we cannot find it "highly probable" that these species have suffered serious injury, let alone as a result of any overconsumption by Georgia. See *Colorado II*, 467 U. S., at 316.

* * *

In short, Florida has not met the exacting standard necessary to warrant the exercise of this Court's extraordinary authority to control the conduct of a coequal sovereign. We emphasize that Georgia has an obligation to make reasonable use of Basin waters in order to help conserve that increasingly scarce resource. But in light of the record before us, we must overrule Florida's exceptions to the Special Master's Report and dismiss the case.

It is so ordered.

REPORTER'S NOTE

Orders commencing with February 25, 2021, begin with page 1301. The preceding orders in 592 U. S., from October 5, 2020, through February 22, 2021, were reported in Part 1, at 901–1300. 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.

FEBRUARY 25, 2021

Dismissal Under Rule 46

No. 20–6877. IN RE WINDSOR. Petition for writ of mandamus dismissed under this Court's Rule 46.

FEBRUARY 26, 2021

Miscellaneous Order

No. 20A138. GATEWAY CITY CHURCH ET AL. *v.* NEWSOM, GOVERNOR OF CALIFORNIA, ET AL. Application for injunctive relief, presented to JUSTICE KAGAN, and by her referred to the Court, granted pending disposition of the appeal in the United States Court of Appeals for the Ninth Circuit and disposition of the petition for writ of certiorari, if such writ is timely sought. The Ninth Circuit's failure to grant relief was erroneous. This outcome is clearly dictated by this Court's decision in *South Bay United Pentecostal Church* v. *Newsom*, 592 U. S. 1243 (2021). Should the petition for writ of certiorari be denied, this order shall terminate automatically. In the event the petition for writ of certiorari is granted, the order shall terminate upon the sending down of the judgment of this Court.

JUSTICE KAGAN, with whom JUSTICE BREYER and JUSTICE SOTOMAYOR join, dissenting.

I dissent for the reasons set out in *South Bay United Pentecostal Church* v. *Newsom*, 592 U. S. 1243, 1250 (2021) (KAGAN, J., dissenting from partial grant of application for injunctive relief).

MARCH 1, 2021

Miscellaneous Orders

No. 20M59. BILLIE *v.* BROWN, SHERIFF, SANTA BARBARA COUNTY, CALIFORNIA. C. A. 9th Cir.; and

No. 20M60. LIGGINS *v.* JPMORGAN CHASE BANK, N. A. Ct. App. Ohio, 10th App. Dist., Franklin County. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 20–315. SANCHEZ ET UX. *v.* MAYORKAS, SECRETARY OF HOMELAND SECURITY, ET AL. C. A. 3d Cir. [Certiorari granted *sub nom. Sanchez* v. *Wolf*, 592 U. S. 1162.] Motion of petitioners to dispense with printing joint appendix granted.

No. 20–472. HollyFrontier Cheyenne Refining, LLC, et al. *v.* Renewable Fuels Assn. et al. C. A. 10th Cir. [Certiorari granted, 592 U. S. 1163.] Motion of petitioners to dispense with printing joint appendix granted.

No. 20–603. Torres *v.* Texas Department of Public Safety. Ct. App. Tex., 13th Dist. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 20–6719. Jackson *v.* Williams. App. Ct. Ill., 3d Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March 22, 2021, within which to pay the docketing fee required by this Court's Rule 38(a).

No. 20–858. In re Bowyer et al.; and

No. 20–859. In re Feehan. Petitions for writs of mandamus denied.

No. 20–871. In re Moore. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 20–303. United States *v.* Vaello Madero. C. A. 1st Cir. Certiorari granted. Reported below: 956 F. 3d 12.

No. 20–480. Babcock *v.* Saul, Commissioner of Social Security. C. A. 6th Cir. Certiorari granted. Reported below: 959 F. 3d 210.

Certiorari Denied

No. 20–249. Ommen, as Liquidator of CoOportunity Health, et al. *v.* Milliman, Inc., et al. Sup. Ct. Iowa. Certiorari denied. Reported below: 941 N. W. 2d 310.

No. 20–283. Bass *v.* Greve et al. C. A. 6th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 336.

No. 20–374. Continental Resources, Inc. *v.* Buckles, Deceased, By and Through His Personal Representative, Buckles, et al. Sup. Ct. Mont. Certiorari denied. Reported below: 400 Mont. 18, 462 P. 3d 223.

No. 20–535. Bates *v.* United States. C. A. 10th Cir. Certiorari denied.

No. 20–546. MICHIGAN *v.* MATHEWS. Ct. App. Mich. Certiorari denied. Reported below: 324 Mich. App. 416, 922 N. W. 2d 371.

No. 20–708. JAMES *v.* RAYBON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 957 F. 3d 1184.

No. 20–717. CONCERNED CITIZENS FOR NUCLEAR SAFETY, INC. *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. 10th Cir. Certiorari denied.

No. 20–762. FERRIER *v.* CASCADE FALLS CONDOMINIUM ASSN., INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 911.

No. 20–844. MURRAY *v.* FRY, AS EXECUTRIX OF THE ESTATE OF FRY, ET AL. App. Ct. Conn. Certiorari denied.

No. 20–849. P. F. *v.* J. S. ET AL. Sup. Ct. Kan. Certiorari denied. Reported below: 311 Kan. 798, 466 P. 3d 1207.

No. 20–851. HAWES *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 964 F. 3d 412.

No. 20–856. PISNER *v.* MCCARTHY. Ct. Sp. App. Md. Certiorari denied. Reported below: 245 Md. App. 744 and 746.

No. 20–857. MIESEN *v.* MUNDING ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 546.

No. 20–909. RANDHAWA *v.* BANK OF NEW YORK MELLON, FKA BANK OF NEW YORK. C. A. 9th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 45.

No. 20–920. COLLINS *v.* PUTT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 979 F. 3d 128.

No. 20–931. HILLIER *v.* CENTRAL INTELLIGENCE AGENCY ET AL. C. A. D. C. Cir. Certiorari denied.

No. 20–932. FRANKLIN *v.* LAUGHLIN ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 136 Nev. 809, 467 P. 3d 643.

No. 20–956. DZIEDZIACH *v.* WILKINSON, ACTING ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 799 Fed. Appx. 70.

No. 20–971. HURTADO *v.* WILKINSON, ACTING ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 310.

No. 20–995. VETRI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 811 Fed. Appx. 79.

No. 20–1005. DEES *v.* SAN DIEGO COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 960 F. 3d 1145.

No. 20–1038. BROWN *v.* COMSTOCK. C. A. 4th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 107.

No. 20–1041. SORIA ET AL., INDIVIDUALLY AND AS PARENTS AND NATURAL GUARDIANS OF G. S. *v.* NEW YORK CITY DEPARTMENT OF EDUCATION. C. A. 2d Cir. Certiorari denied. Reported below: 831 Fed. Appx. 16.

No. 20–1059. MURRY *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 13 Wash. App. 2d 542, 465 P. 3d 330.

No. 20–6200. WEBB *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 885.

No. 20–6210. STATEN *v.* DAVIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 962 F. 3d 487.

No. 20–6211. ROBBINS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 20–6234. MOYNIHAN *v.* WEST CHESTER AREA SCHOOL DISTRICT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 813 Fed. Appx. 825.

No. 20–6414. RAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 414.

No. 20–6425. MEECE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–6466. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 188.

No. 20–6696. KOENIG *v.* WHEELER, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL. C. A. 8th Cir. Certiorari denied.

No. 20–6705. CORMIER *v.* COMEY ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–6711. LEATHERMAN *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 9.

No. 20–6717. KRAVITZ *v.* LEIS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 803 Fed. Appx. 547.

No. 20–6718. JOHNSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 20–6729. BULLOCK *v.* HOOKS, SECRETARY, NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY. C. A. 4th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 216.

No. 20–6746. LOYD *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 311 So. 3d 969.

No. 20–6749. MORALES *v.* MISSOURI ET AL. C. A. 8th Cir. Certiorari denied.

No. 20–6751. WALDREP *v.* SHINN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, REHABILITATION AND REENTRY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–6762. KNIPFER *v.* RICHARDSON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 20–6815. MUNOZ *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 20–6959. SOMERS *v.* FORSHEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–6964. MORALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 365.

No. 20–6974. WILSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 837 Fed. Appx. 396.

No. 20–6985. ZONGLI CHANG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 20–6992. MAYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–6995. CLARK *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 977 F. 3d 1283.

No. 20–7002. LANDER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 825 Fed. Appx. 44.

No. 20–7006. DORAN, AKA GORMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 978 F. 3d 1337.

No. 20–7007. COLLINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 241.

No. 20–7012. RECZKO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 701.

No. 20–7021. VALENCIA-CORTEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 204.

No. 20–7026. BERRY *v.* LAWSON, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER. Sup. Ct. Mo. Certiorari denied.

No. 20–7029. KINARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 525.

No. 20–7031. DIAZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 833 Fed. Appx. 856.

No. 20–7042. HOENIG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–299. MILLIMAN, INC. *v.* DONELON, COMMISSIONER OF INSURANCE FOR LOUISIANA, AS REHABILITATOR OF LOUISIANA HEALTH COOPERATIVE, INC. Sup. Ct. La. Motion of American Institute of Certified Public Accountants for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 2019–00514 (La. 4/27/20), 340 So. 3d 786.

No. 20–641. LSP TRANSMISSION HOLDINGS, LLC *v.* SIEBEN ET AL. C. A. 8th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 954 F. 3d 1018.

No. 20–976. PENNY *v.* LINCOLN'S CHALLENGE ACADEMY. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 822 Fed. Appx. 497.

No. 20–977. PULERA *v.* SARZANT ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 966 F. 3d 540.

No. 20–6993. JACKSON *v.* OFFICE OF THE MAYOR OF THE DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition.

No. 20–7008. DEARBORN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition.

Rehearing Denied

No. 20–5990. MORENO-RUIZ *v.* BARR, ATTORNEY GENERAL, 592 U. S. 1131;

No. 20–6286. ARAGON *v.* WILLIAMS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL., 592 U. S. 1186; and

No. 20–6476. ALLEN *v.* UNITED STATES, 592 U. S. 1223. Petitions for rehearing denied.

MARCH 4, 2021

Dismissals Under Rule 46

No. 20–666. WILKINSON, ACTING ATTORNEY GENERAL, ET AL. *v.* CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 965 F. 3d 753.

No. 20–795. NEW YORK ET AL. *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 2d Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 951 F. 3d 84.

No. 20–796. CITY OF NEW YORK *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 2d Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 951 F. 3d 84.

MARCH 8, 2021

Certiorari Granted—Vacated and Remanded

No. 19–632. WILKINSON, ACTING ATTORNEY GENERAL *v.* MARINELARENA. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of

Pereida v. *Wilkinson*, 592 U. S. 224 (2021). Reported below: 930 F. 3d 1039.

Miscellaneous Orders

No. 20A135. Doe et al. *v.* Zucker, Commissioner of Health for the State of New York, et al. D. C. N. D. N. Y. Application for injunctive relief, addressed to Justice Gorsuch and referred to the Court, denied.

No. 20M61. Rodriguez *v.* Barrows et al. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 20–157. Caniglia *v.* Strom et al. C. A. 1st Cir. [Certiorari granted, 592 U. S. 1112.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 20–222. Goldman Sachs Group, Inc., et al. *v.* Arkansas Teacher Retirement System et al. C. A. 2d Cir. [Certiorari granted, 592 U. S. 1144.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 20–6031. Talley *v.* United States District Court for the Southern District of Illinois. C. A. 7th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [592 U. S. 1164.] denied.

No. 20–6780. Aguilar *v.* Specialized Loan Servicing, LLC, et al. Ct. App. Cal., 2d App. Dist., Div. 1; and

No. 20–6834. Holmes *v.* Cochran, Acting Secretary of Health and Human Services. C. A. 4th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 29, 2021, within which to pay the docketing fees required by this Court's Rule 38(a).

No. 20–887. In re Wood; and

No. 20–918. In re Kelly. Petitions for writs of mandamus denied.

Certiorari Granted

No. 20–659. Thompson *v.* Clark et al. C. A. 2d Cir. Certiorari granted. Reported below: 794 Fed. Appx. 140.

Certiorari Denied

No. 19–434. Romero *v.* Wilkinson, Acting Attorney General. C. A. 4th Cir. Certiorari denied. Reported below: 755 Fed. Appx. 327.

No. 20–481. GE Capital Retail Bank *v.* Belton. C. A. 2d Cir. Certiorari denied. Reported below: 961 F. 3d 612.

No. 20–585. Vasquez et al. *v.* Amador, Individually and as Representative of the Estate of Flores and as Next Friend of Minor R. M. F., et al. C. A. 5th Cir. Certiorari denied. Reported below: 961 F. 3d 721.

No. 20–636. Howse *v.* Hodous et al. C. A. 6th Cir. Certiorari denied. Reported below: 953 F. 3d 402.

No. 20–676. J. P., By and Through His Guardian ad Litem, Villanueva *v.* Alameda County, California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 106.

No. 20–711. City of Fairbanks, Alaska, et al. *v.* Roberts et al. C. A. 9th Cir. Certiorari denied. Reported below: 947 F. 3d 1191.

No. 20–764. O'Brien *v.* U. S. Bank Trust, N. A., as Trustee for LSF9 Master Participation Trust. App. Ct. Conn. Certiorari denied. Reported below: 196 Conn. App. 903, 225 A. 3d 1250.

No. 20–864. Arimitsu *v.* Cook. Ct. App. Minn. Certiorari denied.

No. 20–873. Miller, Inc. *v.* Blumenthal Distributing, Inc., dba Office Star. C. A. 9th Cir. Certiorari denied. Reported below: 963 F. 3d 859.

No. 20–874. Phillips *v.* State Bar of Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 136 Nev. 826, 462 P. 3d 688.

No. 20–879. Lopez *v.* United States et al. C. A. 9th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 855.

No. 20–883. Trump *v.* Wisconsin Elections Commission et al. C. A. 7th Cir. Certiorari denied. Reported below: 983 F. 3d 919.

No. 20–904. HOLTER *v.* CITY OF MANDAN, NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 2020 ND 202, 948 N. W. 2d 858.

No. 20–914. TNT CRANE & RIGGING, INC. *v.* OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 348.

No. 20–929. GILLESPIE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 20–935. RICHARDS ET AL. *v.* OLENS ET AL. Sup. Ct. Ga. Certiorari denied.

No. 20–942. BUIE *v.* DEPARTMENT OF LABOR, ADMINISTRATIVE REVIEW BOARD. C. A. 8th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 450.

No. 20–966. ROY *v.* WILKINSON, ACTING ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 960 F. 3d 1175.

No. 20–1036. BOLINSKE *v.* SUPREME COURT OF NORTH DAKOTA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 444.

No. 20–1040. STRICKLAND *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 303 Ore. App. 240, 463 P. 3d 537.

No. 20–1058. NATIONAL BOARD OF MEDICAL EXAMINERS *v.* RAMSAY. C. A. 3d Cir. Certiorari denied. Reported below: 968 F. 3d 251.

No. 20–5344. TAYLOR *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2019 IL App (1st) 150628–U.

No. 20–5778. DAVALOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 268.

No. 20–5886. SMITH *v.* DOBIN. C. A. 3d Cir. Certiorari denied.

No. 20–6050. MARTIN *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 484 Mass. 634, 144 N. E. 3d 254.

No. 20–6190. FREEMAN *v.* NEW MEXICO. Dist. Ct. N. M., Otero County. Certiorari denied.

No. 20–6295. RAIVELY *v.* WHELIHAN. Super. Ct. N. J., App. Div. Certiorari denied.

No. 20–6334. SINGHDEREWA *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL. Ct. App. Cal., 2d App. Dist., Div. 3. Certiorari denied.

No. 20–6386. WALKER *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 136 Nev. 892, 465 P. 3d 217.

No. 20–6413. SHEPARD *v.* DEPARTMENT OF VETERANS AFFAIRS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 819 Fed. Appx. 622.

No. 20–6492. JAMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 831 Fed. Appx. 442.

No. 20–6758. KOROMA *v.* LANHAM ET AL. Ct. App. Ga. Certiorari denied.

No. 20–6760. THOMAS *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 20–6764. DAVIS *v.* MORLEDGE, JUDGE, CIRCUIT COURT OF ARKANSAS, ST. FRANCIS COUNTY, ET AL. C. A. 8th Cir. Certiorari denied.

No. 20–6765. DICKSON *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 20–6767. THOMAS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 20–6769. RODRIGUEZ *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 945.

No. 20–6772. SPREITZ *v.* SHINN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, REHABILITATION AND REENTRY. C. A. 9th Cir. Certiorari denied.

No. 20–6779. BRIGHT *v.* DIDIOS. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 307 So. 3d 641.

No. 20–6785. PETROZZI *v.* WASHINGTON ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–6790. MUSTAFA *v.* ILLINOIS HUMAN RIGHTS COMMISSION ET AL. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2020 IL App (2d) 170040–U.

No. 20–6798. STUBBS *v.* KAUFFMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON. C. A. 3d Cir. Certiorari denied.

No. 20–6805. WILLIAMS *v.* STEIN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 192.

No. 20–6810. WATKINS *v.* GEORGIA. Ct. App. Ga. Certiorari denied.

No. 20–6814. JOHNSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2020 IL App (1st) 172987, 164 N. E. 3d 64.

No. 20–6818. RUSSELL *v.* PAYNE, DIRECTOR, ARKANSAS DIVISION OF CORRECTION. Sup. Ct. Ark. Certiorari denied. Reported below: 2020 Ark. 377.

No. 20–6845. TRAN *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 20–6858. SOTO *v.* AFSCME UNION COUNCIL 5 LOCAL 12181 ET AL. Ct. App. Minn. Certiorari denied.

No. 20–6875. PIERCE *v.* BROOKS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 20–6896. BENJAMIN *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 283 So. 3d 828.

No. 20–6906. HAMILTON *v.* JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 20–6924. BELTRAN *v.* KOENIG, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 532.

No. 20–6945. WHITE *v.* KUBOTEK CORP. ET AL. C. A. 1st Cir. Certiorari denied.

No. 20–6991. JURADO-NAZARIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 979 F. 3d 60.

No. 20–7039. KEELAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 20–7040. LOVATO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–7050. MUHAMMAD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 206.

No. 20–7058. WILSON *v.* SHELDON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–7066. ECHOLS *v.* FENDER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–7078. BENNETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 605.

No. 20–7079. BARNES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 233.

No. 20–7087. HOLLAND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 628.

No. 20–7089. TAYLOR *v.* WALZ, GOVERNOR OF MINNESOTA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 968 F. 3d 857.

No. 20–317. CHAVIS *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 227 A. 3d 1079.

JUSTICE GORSUCH, dissenting.

I dissent for the reasons set out in *Stuart* v. *Alabama*, 586 U. S. 1026 (2018) (GORSUCH, J., dissenting from denial of certiorari).

No. 20–6835. HAMILTON *v.* REAGLE, WARDEN. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition.

No. 20–6860. SHIELDS *v.* UNITED STATES. C. A. 2d Cir. Certiorari before judgment denied.

No. 20–6872. HILDRETH *v.* BUTLER ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 960 F. 3d 420.

No. 20–7046. BILZERIAN *v.* SECURITIES EXCHANGE COMMISSION. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 811 Fed. Appx. 3.

No. 20–7059. DOTSON *v.* HENDRIX, WARDEN. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 20–7062. CROSS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 962 F. 3d 892.

No. 20–7115. CARTER *v.* LAWRENCE, WARDEN. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition.

Rehearing Denied

No. 19–8386. CULVERHOUSE *v.* TEXAS, 592 U. S. 925;

No. 19–8848. PHILLIPS *v.* OBERLANDER ET AL., 592 U. S. 946;

No. 20–532. XIAOHUA HUANG *v.* HUAWEI TECHNOLOGY CO., LTD., 592 U. S. 1172;

No. 20–619. R. S. ET AL., INDIVIDUALLY AND ON BEHALF OF THEIR SON, A. S. *v.* BOARD OF EDUCATION SHENENDEHOWA CENTRAL SCHOOL DISTRICT ET AL., 592 U. S. 1174;

No. 20–654. RIPA *v.* STONY BROOK UNIVERSITY, 592 U. S. 1176;

No. 20–684. TAGGER *v.* STRAUSS GROUP LTD., 592 U. S. 1176;

No. 20–713. VENTURA DE PAULINO *v.* NEW YORK CITY DEPARTMENT OF EDUCATION ET AL., 592 U. S. 1177;

No. 20–6064. SMITH *v.* WASHINGTON, 592 U. S. 1132; and

No. 20–6333. SANCHEZ *v.* CALIFORNIA ET AL., 592 U. S. 1221. Petitions for rehearing denied.

MARCH 9, 2021

Dismissals Under Rule 46

No. 20–449. DEPARTMENT OF HOMELAND SECURITY ET AL. *v.* NEW YORK ET AL. C. A. 2d Cir. [Certiorari granted, 592 U. S. 1262.] Writ of certiorari dismissed under this Court's Rule 46.1. Reported below: 969 F. 3d 42.

No. 20–450. MAYORKAS, SECRETARY OF HOMELAND SECURITY, ET AL. *v.* COOK COUNTY, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 962 F. 3d 208.

No. 20–962. UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES ET AL. *v.* CITY AND COUNTY OF SAN FRANCISCO, CALI-

FORNIA, ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 981 F. 3d 742.

MARCH 11, 2021

Dismissal Under Rule 46

No. 20–916. HOOKER *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari dismissed under this Court's Rule 46. Reported below: 2019 IL App (3d) 170597–U.

Miscellaneous Order

No. 20–659. THOMPSON *v.* CLARK ET AL. C. A. 2d Cir. [Certiorari granted, 592 U. S. 1308.] The order granting the petition for writ of certiorari amended as follows: Certiorari granted limited to Question 1 presented by the petition.

MARCH 19, 2021

Miscellaneous Orders

No. 19–1414. UNITED STATES *v.* COOLEY. C. A. 9th Cir. [Certiorari granted, 592 U. S. 1112.] Motion of respondent for appointment of counsel granted, and Eric R. Henkel, Esq., of Missoula, Mont., is appointed to serve as counsel for respondent in this case.

No. 20–297. TRANSUNION LLC *v.* RAMIREZ. C. A. 9th Cir. [Certiorari granted, 592 U. S. 1156.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 20–512. NATIONAL COLLEGIATE ATHLETIC ASSN. *v.* ALSTON ET AL.; and

No. 20–520. AMERICAN ATHLETIC CONFERENCE ET AL. *v.* ALSTON ET AL. C. A. 9th Cir. [Certiorari granted, 592 U. S. 1156.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 20–5904. TERRY *v.* UNITED STATES. C. A. 11th Cir. [Certiorari granted, 592 U. S. 1163.] Case removed from the calendar for the April 2021 argument session. Adam K. Mortara, Esq., of Chicago, Ill., is invited to brief and argue this case as *amicus curiae* in support of the judgment below. The case will be rescheduled for argument this Term.

MARCH 22, 2021

Certiorari Dismissed

No. 20–6830. JONES *v.* BANK OF AMERICA 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.

No. 20–6849. TYLER *v.* POOLE 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*). Reported below: 827 Fed. Appx. 315.

No. 20–6853. ADKINS *v.* DULLES HOTEL CORP. 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: 832 Fed. Appx. 205.

No. 20–6868. SUNDY *v.* FRIENDSHIP PAVILION ACQUISITION CO., LLC, ET AL. Ct. App. Ga. 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. 20–7000. BROWN *v.* FOLEY, 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.

Miscellaneous Orders

No. 20M62. LOPEZ *v.* SUPERIOR COURT OF CALIFORNIA ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 20M63. WOODY *v.* NEW JERSEY. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 20M64. PORTILLO *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 20–7209. IN RE LOPEZ. Petition for writ of habeas corpus denied.

No. 20–7307. IN RE BEATON. 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. 20–933. IN RE FINNEGAN. Petition for writ of mandamus denied.

No. 20–6908. IN RE INGRAM EL. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 20–443. UNITED STATES *v.* TSARNAEV. C. A. 1st Cir. Certiorari granted. Reported below: 968 F. 3d 24.

No. 20–794. SERVOTRONICS, INC. *v.* ROLLS-ROYCE PLC ET AL. C. A. 7th Cir. Certiorari granted. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 975 F. 3d 689.

Certiorari Denied

No. 20–409. MARINO ET UX. *v.* OCWEN LOAN SERVICING, LLC. C. A. 9th Cir. Certiorari denied. Reported below: 949 F. 3d 483.

No. 20–587. WHITE, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF POLLARD *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 959 F. 3d 328.

No. 20–649. LEVEL THE PLAYING FIELD ET AL. *v.* FEDERAL ELECTION COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 961 F. 3d 462.

No. 20–669. BELL *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 20–727. FACEBOOK, INC. *v.* DAVIS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 956 F. 3d 589.

No. 20–763. RICHARDSON ET AL. *v.* COVERALL NORTH AMERICA, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 811 Fed. Appx. 100.

No. 20–779. ARGENTUM PHARMACEUTICALS LLC *v.* NOVARTIS PHARMACEUTICALS CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 956 F. 3d 1374.

No. 20–808. MILES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 9 Cal. 5th 513, 464 P. 3d 611.

No. 20–839. GREENWAY *v.* SOUTHERN HEALTH PARTNERS, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 827 Fed. Appx. 952.

No. 20–840. KNOWLES *v.* HART. C. A. 11th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 646.

No. 20–919. SPINNENWEBER ET AL. *v.* WILLIAMS. C. A. 11th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 730.

No. 20–936. KNIGHT *v.* WARD & GLASS ET AL. Ct. Civ. App. Okla. Certiorari denied.

No. 20–938. WALKER ET AL. *v.* DEUTSCHE BANK NATIONAL TRUST CO., AS TRUSTEE FOR HARBORVIEW MORTGAGE LOAN TRUST MORTGAGE LOAN PASS-THROUGH CERTIFICATES, SERIES 2007–6. Sup. Ct. Fla. Certiorari denied.

No. 20–943. BARTON ET VIR *v.* JPMORGAN CHASE BANK, N. A., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 899.

No. 20–944. STARK *v.* STARK. Ct. App. Tenn. Certiorari denied.

No. 20–945. RUSSELL *v.* TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 824 Fed. Appx. 299.

No. 20–949. LIMCACO *v.* WYNN LAS VEGAS, LLC, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 465.

No. 20–950. JAMES *v.* CITY OF MONTGOMERY, ALABAMA. C. A. 11th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 728.

No. 20–954. OHIO EX REL. BRINKMAN *v.* O'CONNOR ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 159 Ohio St. 3d 1479, 2020-Ohio-4053, 150 N. E. 3d 972.

No. 20–959. THIGPEN *v.* BOARD OF TRUSTEES OF THE LOCAL 807 LABOR-MANAGEMENT PENSION FUND. C. A. 2d Cir. Certiorari denied.

No. 20–968. R. M. S. *v.* MADISON COUNTY DEPARTMENT OF HUMAN RESOURCES. Ct. Civ. App. Ala. Certiorari denied.

No. 20–972. IBEABUCHI *v.* EGGLESTON, DIRECTOR OF OPERATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 504.

No. 20–973. HAYWOOD-WATSON *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 20–974. SVRCINA ET AL. *v.* NAGO, CHIEF ELECTION OFFICER OF THE STATE OF HAWAII, ET AL. Sup. Ct. Haw. Certiorari denied.

No. 20–983. ALMEDA *v.* DEPARTMENT OF EDUCATION ET AL. C. A. D. C. Cir. Certiorari denied.

No. 20–985. FLYNN *v.* DEPARTMENT OF THE ARMY. C. A. 9th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 298.

No. 20–991. ENGLAND *v.* HART, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 970 F. 3d 698.

No. 20–992. VIGNA *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 470 Md. 418, 235 A. 3d 937.

No. 20–993. MICKENS *v.* ARKANSAS. Ct. App. Ark. Certiorari denied. Reported below: 2020 Ark. App. 280, 599 S. W. 3d 392.

No. 20–1030. BROWN *v.* BROWN-THOMAS ET AL. Sup. Ct. S. C. Certiorari denied. Reported below: 430 S. C. 474, 846 S. E. 2d 342.

No. 20–1039. AVILES-WYNKOOP *v.* DEPARTMENT OF DEFENSE. C. A. Fed. Cir. Certiorari denied. Reported below: 825 Fed. Appx. 834.

No. 20–1042. HERNANDEZ *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 181 App. Div. 3d 530, 122 N. Y. S. 3d 11.

No. 20–1050. POINT DU JOUR *v.* GARLAND, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 960 F. 3d 1348.

No. 20–1053. PITTS *v.* OHIO. Ct. App. Ohio, 6th App. Dist., Lucas County. Certiorari denied. Reported below: 2020-Ohio-2655.

No. 20–1079. BOGGS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 829 Fed. Appx. 610.

No. 20–1083. ROSSLEY *v.* DRAKE UNIVERSITY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 979 F. 3d 1184.

No. 20–1103. KISSELL *v.* PENNSYLVANIA DEPARTMENT OF CORRECTIONS. C. A. 3d Cir. Certiorari denied. Reported below: 808 Fed. Appx. 58.

No. 20–1121. SAYLOR *v.* BOYD, INTERIM WARDEN. C. A. 8th Cir. Certiorari denied.

No. 20–1128. WALSH *v.* HODGE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 975 F. 3d 475.

No. 20–1131. DIMORA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 973 F. 3d 496.

No. 20–1154. TORRES-NIEVES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 828 Fed. Appx. 448.

No. 20–1177. NATIONAL MEDICAL IMAGING, LLC, ET AL. *v.* U. S. BANK N. A. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 818 Fed. Appx. 129.

No. 20–5375. HALL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 945 F. 3d 1035.

No. 20–6296. LAGUE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 971 F. 3d 1032.

No. 20–6336. SNELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 151.

No. 20–6339. LARSEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 508.

No. 20–6356. DENNIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 213.

No. 20–6367. ST. FLEUR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 712.

No. 20–6515. PONTICELLI *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 297 So. 3d 1292.

No. 20–6533. REED *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 297 So. 3d 1291.

No. 20–6586. VANDERGROEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 964 F. 3d 876 and 817 Fed. Appx. 420.

No. 20–6735. MCCLUNG ET AL. *v.* ESTEVEZ. Cir. Ct. Miami-Dade County, Fla. Certiorari denied.

No. 20–6793. PARKS *v.* CHAPMAN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 937.

No. 20–6797. SEMBRAT *v.* STANTON, FKA SEMBRAT. Super. Ct. N. J., App. Div. Certiorari denied.

No. 20–6806. MERCK *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 298 So. 3d 1120.

No. 20–6812. MCCOY *v.* ATHERTON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 538.

No. 20–6819. STERLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 631.

No. 20–6821. JACKSON *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 20–6824. BRIGHT *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 299 So. 3d 985.

No. 20–6825. ANDERSEN *v.* MONTES, COMMISSIONER OF CALIFORNIA BOARD OF PAROLE HEARINGS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 863.

No. 20–6826. DEAN-BAUMANN *v.* ESPINOZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 20–6833. FRANCE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 375 N. C. 285, 845 S. E. 2d 431.

No. 20–6836. GUTIERREZ *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 20–6843. DAVIS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2020 IL App (1st) 171265, 168 N. E. 3d 934.

No. 20–6846. CAMPBELL *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 295 So. 3d 767.

No. 20–6847. TORRES *v.* LIVINGSTON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 972 F. 3d 660.

No. 20–6848. WHITLEY *v.* GRAHAM, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 826 Fed. Appx. 304.

No. 20–6851. ATWATER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 300 So. 3d 589.

No. 20–6852. BAUER, FKA GAMRAT *v.* MCBROOM ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 331.

No. 20–6855. O'NEIL *v.* BERQUIST ET AL. App. Ct. Mass. Certiorari denied. Reported below: 97 Mass. App. 1121, 147 N. E. 3d 1103.

No. 20–6865. ROUSER *v.* UNKNOWN. C. A. 9th Cir. Certiorari denied.

No. 20–6866. SUTHERBY *v.* CAMPBELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–6874. MURPHY *v.* ABBOTT, GOVERNOR OF TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 831 Fed. Appx. 151.

No. 20–6881. DOUGLAS *v.* ZIMMERMAN ET AL. Ct. App. Cal., 2d App. Dist., Div. 8. Certiorari denied.

No. 20–6882. ZOU *v.* LINDE ENGINEERING NORTH AMERICA, INC. C. A. 10th Cir. Certiorari denied.

No. 20–6886. ENSLOW *v.* WASHINGTON ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–6892. WILLIAMS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2020 IL App (1st) 162512, 168 N. E. 3d 649.

No. 20–6894. WILLIAMS *v.* SHINN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, REHABILITATION AND REENTRY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–6898. ANDERSON *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 20–6900. REINTS *v.* SAYLER ET AL. Sup. Ct. S. D. Certiorari denied. Reported below: 948 N. W. 2d 58.

No. 20–6901. SIERRA *v.* DANERI ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 229 A. 3d 361.

No. 20–6902. THOMAS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 20–6904. JEFFRIES *v.* JUSTICE AND PUBLIC SAFETY CABINET ET AL. Ct. App. Ky. Certiorari denied. Reported below: 605 S. W. 3d 79.

No. 20–6907. HINES *v.* TOPSHELF MANAGEMENT ET AL. C. A. 2d Cir. Certiorari denied.

No. 20–6910. ALSAEDI *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 298 So. 3d 566.

No. 20–6913. SMITH *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 20–6939. NEVIUS *v.* GREWAL, ATTORNEY GENERAL OF NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 20–6963. MIDYETT *v.* MCDONOUGH, SECRETARY OF VETERANS AFFAIRS. C. A. 8th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 585.

No. 20–6966. JOHNSON, AKA WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 827 Fed. Appx. 283.

No. 20–6967. LOPER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 20–6982. WEED *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 301 So. 3d 905.

No. 20–6983. COLE *v.* MYERS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–6984. ESPOSITO *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 20–6987. RODRIGUEZ *v.* GARLAND, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 975 F. 3d 188.

No. 20–6999. BOUNCHANH *v.* WASHINGTON STATE HEALTH CARE AUTHORITY ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–7001. BRESSI *v.* BRENNEN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 823 Fed. Appx. 116.

No. 20–7004. MATA *v.* MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION. App. Ct. Mass. Certiorari denied. Reported below: 97 Mass. App. 1119, 145 N. E. 3d 913.

No. 20–7009. REED *v.* TOOLE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–7018. WESTBROOK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 20–7020. WHEELER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 831 Fed. Appx. 53.

No. 20–7024. ANCHETA *v.* UNITED STATES; BANKS *v.* UNITED STATES; GRANDBERRY *v.* UNITED STATES; MUHLENBERG *v.* UNITED STATES; VU NGUYEN *v.* UNITED STATES; REEVES *v.* UNITED STATES; STEPHENS *v.* UNITED STATES; and TROY, AKA WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 20–7032. DELRIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 833 Fed. Appx. 103.

No. 20–7033. CHRISTOFFERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 819 Fed. Appx. 276.

No. 20–7034. BULLARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 819 Fed. Appx. 286.

No. 20–7037. RODRIGUEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 828 Fed. Appx. 186.

No. 20–7041. GREEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 819 Fed. Appx. 265.

No. 20–7043. HALL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 20–7044. BARTUNEK *v.* HALL COUNTY, NEBRASKA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 828 Fed. Appx. 340.

No. 20–7047. Francisco Lopez *v.* Garland, Attorney General. C. A. 2d Cir. Certiorari denied.

No. 20–7048. Gabriel Gonzales *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 819 Fed. Appx. 257.

No. 20–7049. Gonzalez *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 981 F. 3d 11.

No. 20–7052. Wright *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 859.

No. 20–7063. Damiani-Melendez *v.* May, Warden, et al. C. A. 3d Cir. Certiorari denied.

No. 20–7064. Perry *v.* North Carolina. Gen. Ct. Justice, Super. Ct. Div., Mecklenburg County. Certiorari denied.

No. 20–7070. Jeremy S. *v.* West Virginia. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 243 W. Va. 523, 847 S. E. 2d 125.

No. 20–7073. Muskett *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 970 F. 3d 1233.

No. 20–7076. Ottogalli *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 20–7080. Alexander *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 20–7082. Bishop *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 20–7085. Hoey *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 807 Fed. Appx. 16.

No. 20–7086. Fetherolf *v.* Shoop, Warden. C. A. 6th Cir. Certiorari denied.

No. 20–7088. Khweis *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 971 F. 3d 453.

No. 20–7090. Omondi *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 623.

No. 20–7091. Chaney *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 290.

No. 20–7094. SHEFFEY *v.* IOWA. C. A. 8th Cir. Certiorari denied.

No. 20–7095. COLLDOCK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 909.

No. 20–7096. REYNOLDS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–7100. ROBINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 247.

No. 20–7102. AHMED *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 589.

No. 20–7108. GAWLIK *v.* SEMPLE ET AL. App. Ct. Conn. Certiorari denied. Reported below: 197 Conn. App. 83, 231 A. 3d 326.

No. 20–7109. FLORES-VILLALVASO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 835 Fed. Appx. 241.

No. 20–7110. FALCON *v.* MCDOWELL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 826 Fed. Appx. 670.

No. 20–7112. MARTINEZ-CARRILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 384.

No. 20–7113. KELLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 765.

No. 20–7114. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 830 Fed. Appx. 153.

No. 20–7118. MILES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 829 Fed. Appx. 686.

No. 20–7119. MOLINE-BORROTO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 970 F. 3d 613.

No. 20–7121. MICHEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 876.

No. 20–7122. COOPER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 979 F. 3d 1084.

No. 20–7124. CLOUD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 826 Fed. Appx. 674.

No. 20–7128. REYNOSA-DENOVA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 317.

No. 20–7132. DYKES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 20–7135. REED *v.* FRAKES, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 8th Cir. Certiorari denied.

No. 20–7138. BEGAY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 974 F. 3d 1172.

No. 20–7140. ACEVES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 449.

No. 20–7141. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 831 Fed. Appx. 649.

No. 20–7142. FOX *v.* GRAY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–7146. GALLARDO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 970 F. 3d 1042.

No. 20–7150. HUBBARD *v.* RATLEDGE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 232.

No. 20–7154. RAMSEUR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 245.

No. 20–7156. SABAR, AKA PIMENTEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 292.

No. 20–7157. SMITH-GARCIA *v.* BURKE. C. A. 9th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 187.

No. 20–7163. KERSHAW *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 779 Fed. Appx. 172.

No. 20–7164. HERNANDEZ-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 293.

No. 20–7166. JORDAN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 20–7167. MEJIA ROMERO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 822 Fed. Appx. 1.

No. 20–7168. MCREYNOLDS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 835 Fed. Appx. 237.

No. 20–7171. CORREA-FIGUEROA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 20–7174. LOPEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 610 S. W. 3d 487.

No. 20–7177. DOYLE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 363.

No. 20–7180. WILSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 20–7181. TAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 251.

No. 20–7182. TUOMI *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 980 F. 3d 787.

No. 20–7186. LEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 827 Fed. Appx. 274.

No. 20–7187. MALIK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 963 F. 3d 1014.

No. 20–7197. ELIAS MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 293.

No. 20–7199. BURKS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 974 F. 3d 622.

No. 20–7202. BAILEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–7206. GONZALEZ-MENDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 829 Fed. Appx. 63.

No. 20–7208. HENDLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 365.

No. 20–7215. NEWELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 814 Fed. Appx. 177.

No. 20–7216. SEAWOOD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 226.

No. 20–7217. CISNEROS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 429.

No. 20–7218. ZUNIGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 831 Fed. Appx. 124.

No. 20–7220. DIAZ-AGURCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 294.

No. 20–7224. DAYE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 827 Fed. Appx. 286.

No. 20–7226. SCANNELL *v.* WASHINGTON STATE BAR ASSN. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 853.

No. 20–7230. THOMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 826 Fed. Appx. 721.

No. 20–7232. ALMANZA-PORTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 301.

No. 20–7237. BRADLEY *v.* KENNEDY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 20–7240. HOLLAHAN *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 2020 IL 125091, 181 N. E. 3d 691.

No. 20–7242. LISTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 287.

No. 20–7244. LANDRY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 521.

No. 20–7246. METCALF *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 196.

No. 20–7255. ZUBIA-OLIVAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 307.

No. 20–97. MASSACHUSETTS LOBSTERMEN'S ASSN. ET AL. *v.* RAIMONDO, SECRETARY OF COMMERCE, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 945 F. 3d 535.

Statement of CHIEF JUSTICE ROBERTS respecting the denial of certiorari.

Which of the following is not like the others: (a) a monument, (b) an antiquity (defined as a "relic or monument of ancient times," Webster's International Dictionary of the English Language 66 (1902)), or (c) 5,000 square miles of land beneath the ocean? If you answered (c), you are not only correct but also a speaker of ordinary English. In this case, however, the Government has relied on the Antiquities Act of 1906 to designate an area of submerged land about the size of Connecticut as a monument—the Northeast Canyons and Seamounts Marine National Monument.

The creation of a national monument is of no small consequence. As part of managing the Northeast Canyons and Seamounts Marine National Monument, for example, President Obama banned almost all commercial fishing in the area with a complete ban to follow within seven years. Presidential Proclamation No. 9496, 3 CFR 262, 266–267 (2016). According to petitioners—several commercial fishing associations—the fishing restrictions would not only devastate their industry but also put severe pressure on the environment as fishing would greatly expand in nearby areas outside the Monument. Although the restrictions were lifted during this litigation, Presidential Proclamation No. 10049, 85 Fed. Reg. 35793 (2020), that decision is set to be reconsidered and the ban may be reinstated, Exec. Order No. 13990, 86 Fed. Reg. 7037, 7039 (2021). Either way, the Monument remains part of a trend of ever-expanding antiquities. Since 2006, Presidents have established five marine monuments alone whose total area exceeds that of all other American monuments combined. Pet. for Cert. 7–8.

The Antiquities Act originated as a response to widespread defacement of Pueblo ruins in the American Southwest. Because there was "scarcely an ancient dwelling site" in the area that had not been "vandalized by pottery diggers for personal gain," the Act provided a mechanism for the "preservation of prehistoric antiquities in the United States." Dept. of Interior, Nat. Park Serv., R. Lee, The Antiquities Act of 1906, pp. 33, 48 (1970) (internal quotation marks omitted). The Act vests significant discretion in the President, who may unilaterally "declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are

situated on land owned or controlled by the Federal Government to be national monuments." 54 U. S. C. § 320301(a). The President may also reserve "parcels of land as a part of the national monuments," but those parcels must "be confined to the smallest area compatible with the proper care and management of the objects to be protected." § 320301(b).

The broad authority that the Antiquities Act vests in the President stands in marked contrast to other, more restrictive means by which the Executive Branch may preserve portions of land and sea. Under the National Marine Sanctuaries Act, for example, the Secretary of Commerce can designate an area of the marine environment as a marine sanctuary, but only after satisfying rigorous consultation requirements and issuing findings on 12 statutory criteria. See 16 U. S. C. § 1433(b). The President is even more constrained when it comes to National Parks, which may be established only by an Act of Congress. See 54 U. S. C. § 100101 *et seq.*

While the Executive enjoys far greater flexibility in setting aside a monument under the Antiquities Act, that flexibility, as mentioned, carries with it a unique constraint: Any land reserved under the Act must be limited to the smallest area compatible with the care and management of the objects to be protected. See § 320301(b). Somewhere along the line, however, this restriction has ceased to pose any meaningful restraint. A statute permitting the President in his sole discretion to designate as monuments "landmarks," "structures," and "objects"—along with the smallest area of land compatible with their management—has been transformed into a power without any discernible limit to set aside vast and amorphous expanses of terrain above and below the sea.

The Northeast Canyons and Seamounts Marine National Monument at issue in this case demonstrates how far we have come from indigenous pottery. The Monument contains three underwater canyons and four undersea volcanoes. The "objects" to be "protected" are the "canyons and seamounts themselves," along with "the natural resources and ecosystems in and around them." Presidential Proclamation No. 9496, 3 CFR 262.

We have never considered how a monument of these proportions—3.2 million acres of submerged land—can be justified under the Antiquities Act. And while we have suggested that

an "ecosystem" and "submerged lands" can, under some circumstances, be protected under the Act, see *Alaska* v. *United States*, 545 U. S. 75, 103 (2005), we have not explained how the Act's corresponding "smallest area compatible" limitation interacts with the protection of such an imprecisely demarcated concept as an ecosystem. The scope of the objects that can be designated under the Act, and how to measure the area necessary for their proper care and management, may warrant consideration—especially given the myriad restrictions on public use this purely discretionary designation can serve to justify. See C. Vincent, Congressional Research Service, National Monuments and the Antiquities Act 8–9 (2018) (detailing ways in which "management" of a monument limits recreational, commercial, and agricultural uses of the surrounding area).

* * *

Despite these concerns, this petition does not satisfy our usual criteria for granting certiorari. No court of appeals has addressed the questions raised above about how to interpret the Antiquities Act's "smallest area compatible" requirement. 54 U. S. C. § 320301(b). The D. C. Circuit below held that petitioners did not plead sufficient facts to assess their claim that the Monument swept beyond the "smallest area compatible" with management of the ecosystem. To date, petitioners have not suggested what this critical statutory phrase means or what standard might guide our review of the President's actions in this area. And at the present time the issue whether to reinstate the fishing prohibition remains under consideration. Exec. Order No. 13990, 86 Fed. Reg. 7037, 7039.

We may be presented with other and better opportunities to consider this issue without the artificial constraint of the pleadings in this case. See Pet. for Cert. 34 (citing five other cases pending in federal courts concerning the boundaries of other national monuments). I concur in the denial of certiorari, keeping in mind the oft-repeated statement that such a denial should not be taken as expressing an opinion on the merits. See *Missouri* v. *Jenkins*, 515 U. S. 70, 85 (1995).

No. 20–633. SMITH *v.* TITUS, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 958 F. 3d 687.

JUSTICE SOTOMAYOR, dissenting.

Because "the Sixth Amendment right to a public trial extends beyond the actual proof at trial," courts must meet a high standard "before excluding the public from any stage of a criminal trial." *Presley* v. *Georgia*, 558 U. S. 209, 212–213 (2010) (*per curiam*). At Byron Smith's trial, however, the judge cleared all members of the public from the courtroom before issuing a key evidentiary ruling. Even though the judge did not justify the closure in accordance with the dictates of this Court's precedents, the Minnesota Supreme Court found no constitutional error because it concluded that defendants have no public-trial right in so-called administrative proceedings. That ruling was manifestly incorrect. Because the Minnesota Supreme Court's decision contravened clearly established federal law, the Court of Appeals for the Eighth Circuit erred in denying Smith's application for a writ of habeas corpus. I would grant the petition for a writ of certiorari and summarily reverse.[1]

I

In the fall of 2012, Smith was the victim of a series of unsolved burglaries, including one that resulted in the theft of two firearms from his home. On Thanksgiving Day, two people again broke into Smith's house. Smith shot them multiple times at close range, killing them both. Although Smith apparently did not know it at the time, one of the intruders, Nicholas Brady, may have participated in the earlier burglaries.

A Minnesota grand jury indicted Smith on two counts of first-degree premeditated murder. The case was scheduled for trial, where Smith planned to argue that he used reasonable force in defending himself. During pretrial proceedings, the court ruled that evidence of Brady's involvement in the prior burglaries would be inadmissible at trial. The court reasoned that because Smith did not know or suspect that Brady had ever burglarized his home, that fact was not relevant to Smith's "state of mind at the time of the shooting." Electronic Case Filing in *Smith* v. *Smith*, No. 0:17–cv–00673 (D Minn.), Doc. 2–1, pp. 2, 7 (ECF).

[1] Absent summary reversal, the Court should, at the very least, grant certiorari to determine whether the Eighth Circuit's decision can be reconciled with this Court's precedents. If nothing else, Smith's petition makes clear that state and federal courts are in need of further guidance.

The issue came up again at a pretrial hearing on the parties' motions *in limine*, when Smith proposed to call two witnesses, Jesse Kriesel and Cody Kasper, to testify that they were Brady's accomplices in the prior burglaries.[2] On the first day of Smith's trial, immediately after the deputy court administrator called the case (and before the jury was seated), the court ruled on the admissibility of Kriesel's and Kasper's testimony. Before issuing its ruling, however, the trial judge cleared the courtroom of all public spectators, leaving only the attorneys, court staff, and Smith. See ECF Doc. 12–4, p. 4, Tr. 749. Smith's attorney objected to the courtroom closure, but the court overruled him. See *ibid.* The court then gave its reasons for precluding the witnesses' testimony:

> "[T]he pretrial ruling of the court was that the defense had given notice that it . . . wants to offer testimony from Jesse Kriesel and Cody Kasper about their involvement in prior burglaries which, of course, would have involved Nick Brady as well as a co-perpetrator. And the court has ruled the defendant will not disclose the names of Kriesel, Kasper or Brady involved in prior burglaries . . . . Disclosure can be made of the relevant facts of prior burglaries, including that they occurred . . . and items taken[, but t]he limitation is in effect because . . . the court . . . finds that the defendant did not know . . . the identity of those who had broken into his home on prior occasions; and, therefore, it would be prejudicial." *Id.*, at 4–5, Tr. 749–750.

The court went on to explain why it had overruled defense counsel's objection to the courtroom closure:

> "And for that reason . . . the court is not allowing the press in for this ruling, because otherwise it could be printed, . . . and then of course it runs the risk of getting to the jury if for some reason they don't adhere to their oath." *Id.*, at 6, Tr. 751.

Smith's attorney requested clarification, asking whether Smith could "call Cody Kasper as a witness and ask [him] about his involvement . . . in these burglaries and who he was with and

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[2] Smith also argued that he should be permitted to call Brady's mother to testify about Brady's involvement in the prior burglaries.

what he saw." *Ibid.* The court responded: "[A]t this point, no, Cody Kasper would not be testifying to that." *Id.*, at 7, Tr. 752.

Immediately after making its oral ruling from the bench, the trial court posted a written order on the public docket that "reiterate[d] that evidence of prior bad acts by Nicholas Brady . . . , of which [Smith] was unaware at the time of the shooting, shall be inadmissible at trial." ECF Doc. 2–2, p. 1. Because Smith could present evidence that he was the victim of prior burglaries "through the testimony of . . . law enforcement agents," the court found "no need to seek its admission through more prejudicial means (*i. e.*, through the testimony of . . . a perpetrator of the prior break-ins)." *Id.*, at 3. The public order did not mention Kriesel or Kasper by name, nor did it explain that Smith had sought to present their testimony specifically.

The remainder of the trial was open to the public. The jury found Smith guilty of two counts of first-degree murder. The court sentenced him to life without the possibility of release.

On appeal, Smith argued that the court violated his public-trial right when it closed the courtroom to rule on the admissibility of Kriesel's and Kasper's testimony. The Minnesota Supreme Court rejected that argument on the theory that "'administrative' proceedings," including "routine evidentiary rulings," categorically "do not implicate the Sixth Amendment right to a public trial." *State* v. *Smith*, 876 N. W. 2d 310, 329 (2016). The court explained that the trial court's ruling "was administrative in nature" because the discussion covered "an issue of evidentiary boundaries, similar to what would ordinarily and regularly be discussed in chambers or at a sidebar conference." *Id.*, at 330. The court affirmed Smith's convictions. *Id.*, at 336.

Smith applied for a writ of habeas corpus in federal court, but the District Court denied relief,[3] and the Eighth Circuit affirmed. The Eighth Circuit concluded that the Minnesota Supreme Court's decision did not contravene clearly established federal law because this Court has never specifically "addressed whether . . .

[3] Although the District Court determined that the "highly deferential standard" imposed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) precluded habeas relief, it expressed serious concerns that the Minnesota Supreme Court's decision "[came] perilously close to satisfying AEDPA's strict standards" and "demonstrate[d] precisely the risk of a slow but steady erosion of constitutional rights." *Smith* v. *Smith*, 2018 WL 3696601, *10, *12 (D Minn., Aug. 3, 2018).

'administrative' proceedings . . . implicate the Sixth Amendment right to a public trial." 958 F. 3d 687, 692 (2020). It further determined that the Minnesota Supreme Court did not "unreasonably apply" this Court's precedents, concluding that "[i]t was not objectively unreasonable" to allow the trial court "to explain the parameters of an earlier public order on evidentiary issues in a brief nonpublic proceeding." *Id.*, at 692–693.

II

A

The Sixth Amendment guarantees that criminal defendants "shall enjoy the right to a . . . public trial." U. S. Const., Amdt. 6. To the Framers, secret trials "obviously symbolized a menace to liberty," and the public-trial right provided a necessary "safeguard against any attempt to employ our courts as instruments of persecution." *In re Oliver*, 333 U. S. 257, 269–270 (1948). Of course, the vast majority of judges and jurors would strive to uphold constitutional principles even if criminal proceedings were closed to the public. But "the public-trial guarantee embodies a view of human nature, true as a general rule, that judges, lawyers, witnesses, and jurors will perform their respective functions more responsibly in an open court than in secret proceedings." *Estes* v. *Texas*, 381 U. S. 532, 588 (1965) (Harlan, J., concurring). Indeed, that is why public-trial violations are among the narrow class of "structural defects" that "defy analysis by 'harmless-error' standards." *Arizona* v. *Fulminante*, 499 U. S. 279, 309 (1991).

Despite the importance of the public-trial right, this Court recognized in *Waller* v. *Georgia*, 467 U. S. 39 (1984), that "the right to an open trial may give way in certain cases to other rights or interests, such as the defendant's right to a fair trial or the government's interest in inhibiting disclosure of sensitive information." *Id.*, at 45. But *Waller* cautioned that "[s]uch circumstances will be rare, . . . and the balance of interests must be struck with special care." *Ibid.* To that end, *Waller* announced four requirements that must be satisfied before a trial court may close a courtroom: (1) the closure must "advance an overriding interest that is likely to be prejudiced," (2) the closure must "be no broader than necessary to protect that interest," (3) the court must "consider reasonable alternatives to closing the proceeding,"

and (4) the court must "make findings adequate to support the closure." *Id.*, at 48.

Any doubt about the reach of *Waller*'s rule was dispelled by *Presley*. There, this Court reiterated *Waller*'s holding "that the Sixth Amendment right to a public trial extends beyond the actual proof at trial." 558 U. S., at 212. As such, *Waller*'s four-factor test "provide[s] standards for courts to apply before excluding the public from *any stage* of a criminal trial." 558 U. S., at 213 (emphasis added).

B

Waller and *Presley* straightforwardly govern the courtroom closure at issue in this case. During Smith's trial, the court removed all members of the public and media from the courtroom. The court then proceeded to issue an evidentiary ruling that precluded several defense witnesses from testifying.[4] Because the evidentiary ruling issued at what was undoubtedly a "stage of [Smith's] criminal trial," *Presley*, 558 U. S., at 213, and because the court failed to consider, much less satisfy, any of the requirements set forth by *Waller*, the courtroom closure clearly violated Smith's Sixth Amendment right to a public trial.

The Minnesota Supreme Court, however, thought differently. In its view, any proceeding that might be deemed "administrative in nature"—including "scheduling," "routine evidentiary rulings," and "matters traditionally addressed during private bench conferences or conferences in chambers"—fall outside the Sixth Amendment's protection entirely. *Smith*, 876 N. W. 2d, at 329–330. This novel exception sharply departs from this Court's precedents.

The Minnesota Supreme Court reasoned that courtroom closures during "administrative exchanges" "'do not hinder the ob-

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[4] No court—not the Minnesota Supreme Court, not the U. S. District Court, and not the Eighth Circuit—has suggested that the trial court's conjecture that the jurors might fail to "adhere to their oath," ECF Doc. 12–4, p. 6, Tr. 751, was sufficient to satisfy *Waller*'s four-factor test. It plainly was not. See 2018 WL 3696601, *11 ("Th[is] Court has little difficulty concluding that the trial court's sua sponte closure during Smith's trial fails the *Waller* test"); *State* v. *Smith*, 876 N. W. 2d 310, 341 (Minn. 2016) (Stras, J., concurring) ("If we were to apply the *Waller* factors to the courtroom closure in this case, there is little doubt that the closure would fail them"). Indeed, the State made no objection to the Federal Magistrate Judge's conclusion that "the trial court's closure would be unconstitutional under *Waller*." 2018 WL 3696601, *10.

jectives which the Court in *Waller* observed were fostered by public trials'" because such exchanges "'ordinarily relate to the application of legal principles to admitted or assumed facts so that no fact finding function is implicated.'" *Id.*, at 329 (quoting *United States* v. *Norris*, 780 F. 2d 1207, 1210 (CA5 1986)). But even if *Waller* could be read to apply only to factfinding proceedings (a dubious assertion), *Presley* plainly cannot. *Presley* held that "the Sixth Amendment right to a public trial extends to the *voir dire* of prospective jurors." 558 U. S., at 213. Jury selection hardly implicates a court's "fact finding function." That does not matter, of course, because "the Sixth Amendment right to a public trial extends beyond the actual proof at trial" to "any stage of a criminal trial." *Id.*, at 212–213. Indeed, it is telling that, to support its distinction between factfinding and law-application proceedings, the Minnesota Supreme Court primarily relied upon a case that predates *Presley* by almost 25 years. See *Smith*, 876 N. W. 2d, at 329 (citing *Norris*, 780 F. 2d, at 1210).

The Minnesota Supreme Court also relied on the fact that the closed-courtroom ruling at issue here was "an outgrowth of two previous public hearings" in which "the court explain[ed] the parameters of its . . . written decision." *Smith*, 876 N. W. 2d, at 330. The court thus implied that an unconstitutional courtroom closure can be cured by contemporaneous publication of the substance of the closed proceedings.[5] That premise is false, as *Waller* made abundantly clear: Even though "the transcript of the [closed] suppression hearing was released to the public" in *Waller*, this Court nevertheless found that the defendant's Sixth Amendment right to a public trial had been violated. 467 U. S., at 43, 48.

That conclusion makes perfect sense in light of the origins and purposes of the Sixth Amendment public-trial right. "'The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the

[5] The trial court's order was not, in any event, a contemporaneous and complete record of the closed proceedings. As explained by the trial court, the very purpose of the courtroom closure was to shield certain information about Kriesel's and Kasper's proposed testimony from public disclosure. See ECF Doc. 12–4, at 6, Tr. 751.

importance of their functions.'" *In re Oliver*, 333 U. S., at 270, n. 25 (quoting 1 T. Cooley, Constitutional Limitations 647 (8th ed. 1927)). A written order is no substitute for a live proceeding, especially when the order has been curated by the same court that concealed its ruling from public view. "People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." *Richmond Newspapers, Inc.* v. *Virginia*, 448 U. S. 555, 572 (1980) (plurality opinion).

Finally, the Minnesota Supreme Court drew an analogy between the closed proceeding in Smith's case and sidebar-like proceedings such as "private bench conferences or conferences in chambers." *Smith*, 876 N. W. 2d, at 329. That analogy is inapt. Sidebars smooth the flow of trial by allowing the court to have succinct, private discussions with counsel without having to remove the jury each time such a conversation is necessary.[6] When sidebar discussions become too lengthy or too contentious, judges commonly excuse the jury and discuss the matter in open court. Sidebars are thus tools of expediency for the benefit of all parties to which, generally speaking, no party objects. In Smith's case, by contrast, the court closed the courtroom before the jury was even seated (and over Smith's objection), not to facilitate trial efficiency but for the stated purpose of concealing information from the public. Thus shielded from public view, the court proceeded to exclude the testimony of witnesses Smith thought critical to his self-defense theory. Therefore, even accepting the Minnesota Supreme Court's view that some classes of sidebar-like exchanges do not constitute part of "any stage of a criminal trial," *Presley*, 558 U. S., at 213, the trial court's ruling here was no sidebar.[7] The courtroom closure was therefore improper.

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[6] Notably, although sidebars happen out of the jury's earshot, they occur within full view of the public and the jurors. See, *e. g.*, *State* v. *Morales*, 2019 ND 206, ¶17, 932 N. W. 2d 106, 114 ("Where a bench conference is held in view of both the public and the jury, despite their inability to hear what is said, the public trial right is satisfied by prompt availability of a record of those proceedings").

[7] The analogy to an in-chambers conference is even more strained. Even assuming that certain matters related to a criminal trial may be resolved in the privacy of the judge's chambers, an evidentiary ruling on a motion *in limine* is wholly inappropriate to that setting.

C

Where, as here, a habeas applicant's claim of legal error "was adjudicated on the merits in State court proceedings," AEDPA permits a federal court to grant habeas relief only if the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court." 28 U. S. C. § 2254(d)(1). A state court's decision is "contrary to . . . clearly established precedent if the state court applies a rule that contradicts the governing law set forth in [this Court's] cases." *Williams* v. *Taylor*, 529 U. S. 362, 405 (2000).

As explained above, the Minnesota Supreme Court's decision directly contradicted *Waller* and *Presley*. The court concluded that the trial court was not required to justify the courtroom closure because the public-trial right does not extend to proceedings that are "administrative in nature." *Smith*, 876 N. W. 2d, at 330. This Court, however, has held that "the Sixth Amendment's right to a public trial extends beyond the actual proof at trial," *Presley*, 558 U. S., at 212, and that "*Waller* provide[s] standards for courts to apply before excluding the public from *any stage* of a criminal trial," *id.*, at 213 (emphasis added). This Court has never suggested that the Sixth Amendment might countenance an exception for so-called administrative proceedings, much less that such an exception would extend to an important evidentiary ruling excluding testimony from multiple defense witnesses. The Minnesota Supreme Court's refusal to apply the *Waller* factors thus contravenes this Court's clear precedent.

The Eighth Circuit avoided this conclusion by artificially cabining *Waller* and *Presley* to their facts. In *Waller*, this Court found that the defendant's public-trial right was violated when the courtroom was closed during a suppression hearing; in *Presley*, the Court held the same when the courtroom was closed during jury *voir dire*. See *Waller*, 467 U. S., at 47; *Presley*, 558 U. S., at 213. In the Eighth Circuit's assessment, the only "'clearly established Federal law' under AEDPA" is that courtrooms may not be unjustifiably closed during "suppression hearings and jury selection proceedings, respectively." 958 F. 3d, at 692. Everything else in *Waller* and *Presley* is, according to the Eighth Circuit, mere "dicta." 958 F. 3d, at 692 (emphasis deleted).

The Eighth Circuit's cramped view of precedent is untenable. "When an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary to that result by which [courts] are bound." *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44, 67 (1996). Lower courts must abide not only by the outcomes of *Waller* and *Presley* (*i. e.*, that the public-trial right extends to suppression hearings and *voir dire* proceedings) but also by the "rationale upon which the Court based [those] results," 517 U. S., at 66–67 (*i. e.*, that the public-trial right extends to any stage of a criminal trial). When this Court announces a legal principle and applies it to a particular factual situation, it is the legal principle itself, not the factual outcome, that becomes clearly established federal law.

The Eighth Circuit's interpretation of "dicta," moreover, contravenes both the terms of AEDPA itself and simple logic. Take this Court's explanation that, under AEDPA, a state-court decision is "contrary to . . . clearly established federal law" in either of two circumstances: "if the state court arrives at a conclusion opposite to that reached by this Court on a question of law *or* if the state court decides a case differently than this Court has on a set of materially indistinguishable facts." *Williams*, 529 U. S., at 413 (emphasis added). The Eighth Circuit's understanding of what constitutes dicta would collapse this disjunctive list into the same test. If the only "holdings" of this Court are fact-bound outcomes, then "a conclusion . . . reached by this Court on a question of law" and a decision of this Court "on a set of materially indistinguishable facts" would be one and the same.[8] Imagine, too, how a state-court defendant would fare under the Eighth Circuit's test if the courtroom were closed during nearly all phases of his trial—from opening arguments, to witness testimony and cross-examination, to closing arguments, to jury instructions

[8] With respect to AEDPA's unreasonable-application prong, the Court has likewise cautioned lower federal courts against limiting the scope of "clearly established Federal law" to factually identical circumstances. See *Panetti* v. *Quarterman*, 551 U. S. 930, 953 (2007) (AEDPA does not "prohibit a federal court from finding an application of a principle unreasonable when it involves a set of facts 'different from those of the case in which the principle was announced' "); *White* v. *Woodall*, 572 U. S. 415, 427 (2014) (AEDPA does not "requir[e] an ' "identical factual pattern before a legal rule must be applied," ' " and "state courts must reasonably apply the rules 'squarely established' by this Court's holdings to the facts of each case").

and the reading of the verdict. By the Eighth Circuit's logic, so long as the courtroom remained open during jury selection (as required by *Presley*) and any suppression hearings (as required by *Waller*), the state court would not have run afoul of any clearly established federal law. The absurdity of this result speaks for itself.

In the end, the Eighth Circuit erred in asserting that "[n]either [*Waller* nor *Presley*] addressed whether a defendant enjoys a Sixth Amendment right to public 'administrative' proceedings of the type involved in this case." 958 F. 3d, at 692. Those cases unequivocally hold that courtrooms may not be closed (absent sufficient justification) during any phase of a criminal proceeding. It does not matter whether those proceedings are purportedly "administrative" or substantive, or whether they are focused on resolving questions of law or fact. Because the Minnesota Supreme Court's decision was contrary to *Waller* and *Presley*, the Eighth Circuit erred by affirming the denial of Smith's application for habeas relief.

* * *

Today's decision denying Smith's request for plenary review is the last in a long series of misguided rulings. First, the Minnesota trial court violated the Sixth Amendment by closing the courtroom without adequate justification. Next, the Minnesota Supreme Court wrongly exempted the closed proceeding from the Sixth Amendment entirely, relying on a brand new administrative-proceeding exception that finds no basis in the Constitution or this Court's precedent. Then, by creatively redefining the meaning of "dicta," the Eighth Circuit erroneously concluded that the Minnesota Supreme Court's decision was not contrary to clearly established Supreme Court precedent. And today, this Court misses the opportunity to correct these compounding injustices.

In reviewing Smith's habeas petition, the U. S. District Court for the District of Minnesota observed that "[t]he closure during Smith's trial is part of a broader and disturbing trend" in Minnesota, whose "courts are restricting public access to criminal trials more frequently and with greater severity." *Smith* v. *Smith*, 2018 WL 3696601, *11 (Aug. 3, 2018). Justices of the Minnesota Supreme Court, too, have expressed alarm about "'creeping courtroom closure'" in Minnesota trial courts. *State* v. *Silvernail*, 831 N. W. 2d 594, 609 (2013) (Anderson, J., dissenting); see

also *State* v. *Brown*, 815 N. W. 2d 609, 624, 626 (2012) (Meyer, J., dissenting) (discussing the Minnesota Supreme Court's exception for "trivial" closures). I share these jurists' well-founded concerns, and I regret this Court's refusal to provide much needed guidance to the lower courts. I would grant Smith's petition for a writ of certiorari and summarily reverse the judgment of the Eighth Circuit.

No. 20–894. ANDERSEN *v.* VILLAGE OF GLENVIEW, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 821 Fed. Appx. 625.

No. 20–910. LEE *v.* PARSHALL. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 816 Fed. Appx. 15.

No. 20–955. NEWHOUSE, ADMINISTRATRIX OF THE ESTATE OF NEWHOUSE *v.* ETHICON, INC., ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 20–996. MARLING *v.* VANIHEL, WARDEN. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 964 F. 3d 667.

No. 20–5715. LONGORIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 958 F. 3d 372.

Statement of JUSTICE SOTOMAYOR, with whom JUSTICE GORSUCH joins, respecting the denial of certiorari.

Under §3E1.1(b) of the Federal Sentencing Guidelines, a defendant whose offense level is 16 or greater may receive a one-level reduction if he timely notifies the prosecution of his intent to plead guilty, "thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently." United States Sentencing Commission, Guidelines Manual §3E1.1(b) (Nov. 2018). A district court can award this reduction only "upon motion of the government." *Ibid.* The commentary to the Guidelines specifies that the "government should not withhold such a motion based on interests not identified in §3E1.1, such as whether the defendant agrees to waive his or her right to appeal." §3E1.1, comment., n. 6.

This petition implicates an important and longstanding split among the Courts of Appeals over the proper interpretation of § 3E1.1(b). Most Circuits have determined that a suppression hearing is not a valid basis for denying the reduction, reasoning that "preparation for a motion to suppress is not the same as preparation for a trial," even if "there is substantial overlap between the issues that will be raised." *United States* v. *Marquez*, 337 F. 3d 1203, 1212 (CA10 2003); see also 958 F. 3d 372, 376 (CA5 2020) (collecting cases). A minority of Circuits have concluded otherwise. See *id.*, at 376. In this case, for example, the Fifth Circuit accepted the Government's refusal to move for a reduction after it had to prepare for a 1-day suppression hearing, concluding that "'a suppression hearing [could be] in effect the substantive equivalent of a full trial.'" *Id.*, at 378.

The Sentencing Commission should have the opportunity to address this issue in the first instance, once it regains a quorum of voting members.* Cf. *Braxton* v. *United States*, 500 U. S. 344, 348 (1991). I write separately to emphasize the need for clarification from the Commission. The effect of a one-level reduction can be substantial. For the most serious offenses, the reduction can shift the Guidelines range by years, and even make the difference between a fixed-term and a life sentence. The present disagreement among the Courts of Appeals means that similarly situated defendants may receive substantially different sentences depending on the jurisdiction in which they are sentenced. When the Commission is able, it should take steps to ensure that § 3E1.1(b) is applied fairly and uniformly.

No. 20–5941. THOMPSON *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 941 F. 3d 813.

JUSTICE KAGAN, with whom JUSTICE BREYER and JUSTICE SOTOMAYOR join, concurring.

A provision of the Antiterrorism and Effective Death Penalty Act of 1996, now codified at 28 U. S. C. § 2254(e)(2), limits the

*Currently, six of the seven voting members' seats are vacant. The votes of at least four members are required for the Commission to promulgate amendments to the Guidelines. See U. S. Sentencing Commission, Organization (Mar. 18, 2021), https://www.ussc.gov/about/who-we-are/organization.

availability of evidentiary hearings in federal habeas proceedings. "If the applicant has failed to develop the factual basis of a claim in State court proceedings," § 2254(e)(2) states, then the habeas court "shall not hold an evidentiary hearing on the claim" unless it finds two conditions met. *Ibid.* First, the claim must rely on either "a new rule of constitutional law" or "a factual predicate that could not have been previously discovered through the exercise of due diligence." *Ibid.* Second, the facts underlying the claim must be "sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable fact-finder would have found the applicant guilty of the underlying offense." *Ibid.*

Notice how much rides on that provision's opening clause. The restriction of evidentiary hearings never kicks in, the clause says, unless "the applicant has failed to develop the factual basis of [his] claim in State court proceedings." *Ibid.*; see *Williams* v. *Taylor*, 529 U. S. 420, 430 (2000) ("By the terms of its opening clause the statute applies" only when "the prisoner has failed to develop the facts"). And this Court has held in no uncertain terms that the phrase "failed to develop" implies a "lack of diligence"—or otherwise said, "some omission, fault, or negligence" attributable to the habeas applicant. *Id.*, at 430–431. So if an applicant's claim went "undeveloped in state court" because of something other than his own neglect—most typically, because of "the prosecution['s] conceal[ment of] the facts"—then § 2254(e)(2)'s restriction of evidentiary hearings would not apply. *Id.*, at 434. In that case, the habeas petitioner does not have to meet the section's stringent demands. See *id.*, at 435 ("[O]nly a prisoner who has neglected his rights in state court need satisfy [§ 2254(e)(2)'s two] conditions"). Even if he cannot do so, he can obtain an evidentiary hearing.

In this case, the Court of Appeals for the Fifth Circuit rejected petitioner Charles Thompson's request for an evidentiary hearing on two claims relating to his capital sentence. See *Thompson* v. *Davis*, 916 F. 3d 444, 458 (2019). Thompson could not get a hearing, the court held, because he alleged errors only in his punishment proceeding. "Even if Thompson were to prevail on th[ose] claim[s]," the court explained, "his guilty verdict would remain untouched." *Ibid.* According to the Fifth Circuit, that meant Thompson could not satisfy § 2254(e)(2) because its second condi-

tion demands that the applicant's claims refute his guilt.* And so, the court concluded, "the district court did not have discretion to grant [Thompson] a hearing." *Ibid.*

But that analysis skips a critical step. As just explained, § 2254(e)(2)'s conditions never come into play if a habeas petitioner has pursued his claim with diligence in state court. And they therefore would not prevent an evidentiary hearing. Yet the Fifth Circuit decision says not a word about the question of diligence. The court did not discuss whether Thompson "made a reasonable attempt, in light of the information available at the time, to investigate and pursue [his] claims in state court." *Williams*, 529 U. S., at 435. Nor could the court have thought his lack of diligence so clear as to somehow go without saying. Consider that the court, just a few paragraphs earlier, granted a certificate of appealability (COA) on Thompson's two claims even though they were procedurally defaulted. It did so because "jurists of reason could debate" (as the COA standard requires) whether the default resulted not from Thompson's neglect but from the State's concealment of evidence. 916 F. 3d, at 457. That "debatable" question is the same one Thompson's request for a hearing raises. If Thompson's claims went undeveloped in state court not through his own fault, but because "the prosecution concealed the facts," then § 2254(e)(2) would drop out of the picture. *Williams*, 529 U. S., at 434. So in failing to address the (concededly debatable) diligence issue, the Fifth Circuit may have wrongly deprived Thompson of an evidentiary hearing.

Still, I do not think this Court's intervention warranted. I doubt that the Fifth Circuit meant to adopt a novel view of § 2254(e)(2), in conflict with how this Court has construed the provision and how every other Court of Appeals applies it. See, *e. g.*, *Williams* v. *Jackson*, 964 F. 3d 621, 630–631 (CA7 2020) ("[F]ocusing on the innocence requirement skims over" another issue—that § 2254(e)(2) "does not prohibit a hearing where the petitioner's failure to develop the factual basis for his claim was beyond his control"). Indeed, several prior Fifth Circuit decisions have gotten the law right. See, *e. g.*, *Harrison* v. *Quarterman*, 496 F. 3d 419, 428 (2007) (recognizing that § 2254(e)(2) "is

*That issue is itself the subject of a Circuit split. Compare *Thompson*, 916 F. 3d, at 458, with *Thompson* v. *Calderon*, 151 F. 3d 918, 924 (CA9 1998) (en banc).

not operative" if the petitioner was diligent). And assuming the decision below is a one-off misapplication of law, our rules counsel against granting review. See Supreme Court Rule 10 (stating criteria for a writ of certiorari). That course is all the more appropriate here because a later decision in Thompson's case raises serious questions about whether an evidentiary hearing would have led to granting him relief on the merits. See *Thompson* v. *Davis*, 941 F. 3d 813, 816 (CA5 2019). So, because I doubt the Fifth Circuit will repeat its error, and because that error probably made no difference, I concur in the denial of certiorari.

No. 20–6622. MITCHELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 20–6828. MURITHI *v.* GLECKLER ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 829 Fed. Appx. 124.

No. 20–7010. SANTIAGO-LUGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 20–7068. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 828 Fed. Appx. 170.

No. 20–7107. HUSBAND *v.* ORMOND, WARDEN. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 813 Fed. Appx. 891.

Rehearing Denied

No. 20–529. BOGGS *v.* UNITED STATES, 592 U. S. 1126;

No. 20–621. HUA CAI *v.* HUNTSMAN CORP., 592 U. S. 1235;

No. 20–739. LEVIN *v.* FRANK, INDIVIDUALLY AND AS CORPORATION COUNSEL FOR THE CITY OF BINGHAMTON, NEW YORK, ET AL., 592 U. S. 1236;

No. 20–757. ASHFORD *v.* OFFICE FOR COUNSEL FOR DISCIPLINE ET AL., 592 U. S. 1236;

No. 20–765. WILLMAN *v.* GARLAND, ATTORNEY GENERAL, 592 U. S. 1236, sub nom. *William* v. *Wilkinson*;

No. 20–6158. Brockington *v.* South Carolina Department of Social Services et al., 592 U. S. 1182;

No. 20–6159. Bruce *v.* Pentagon Federal Credit Union, 592 U. S. 1182;

No. 20–6168. Rahaim *v.* Florida, 592 U. S. 1153;

No. 20–6178. Davis *v.* United States, 592 U. S. 1135;

No. 20–6207. Cooper *v.* Bay County, Florida, et al., 592 U. S. 1183;

No. 20–6219. Lynch *v.* Chao et al., 592 U. S. 1184; and

No. 20–6503. Raudenbush *v.* Monroe County, Tennessee, et al., 592 U. S. 1237. Petitions for rehearing denied.

No. 20–5233. Burns *v.* United States, 592 U. S. 969. Motion for leave to file petition for rehearing denied.

March 25, 2021

Dismissal Under Rule 46

No. 20–6419. Broom *v.* Shoop, Warden. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 963 F. 3d 500.

Miscellaneous Order

No. 20–5904. Terry *v.* United States. C. A. 11th Cir. [Certiorari granted, 592 U. S. 1163.] Brief for Court-appointed *amicus curiae* in support of judgment below, and any other briefs for *amicus curiae* in support, are to be filed on or before Tuesday, April 13, 2021. Any reply brief is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Wednesday, April 28, 2021. Case is set for oral argument on Tuesday, May 4, 2021.

March 26, 2021

Dismissal Under Rule 46

No. 20–251. Gipson *v.* Louisiana. Sup. Ct. La. Certiorari dismissed under this Court's Rule 46. Reported below: 2019–01815 (La. 6/3/20), 296 So. 3d 1051.

March 29, 2021

Certiorari Granted—Reversed. (See *Mays* v. *Hines*, 592 U. S. 385 (2021) (*per curiam*).)

Certiorari Dismissed

No. 20–7103. ALLEN *v.* NORTH CAROLINA ET AL. Sup. Ct. N. C. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 376 N. C. 552, 851 S. E. 2d 371.

No. 20–7269. AKEL *v.* UNITED STATES. 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. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

Miscellaneous Orders

No. D–3067. IN RE DISCIPLINE OF SHARBROUGH. John Walter Sharbrough III, of Mobile, Ala., 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–3068. IN RE DISCIPLINE OF BLATT. Stuart Richard Blatt, of Boca Raton, 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–3069. IN RE DISCIPLINE OF BAGGS. Ellis Charles Baggs, of Richmond, Va., 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–3070. IN RE DISCIPLINE OF BRETTSCHNEIDER. Scott Brettschneider, of Mint Hill, 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–3071. IN RE DISCIPLINE OF MEAGHER. Frederick J. Meagher, Jr., of Binghamton, 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–3072. In re Discipline of Karambelas. Nicholas G. Karambelas, of Washington, D. 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–3073. In re Discipline of Keck. Jeffrey Joseph Keck, of Woodstock, 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. 20M65. Dong Sheng Huang *v.* Hill et al. Motion of petitioner for leave to proceed *in forma pauperis* with declaration of indigency under seal denied. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal denied.

No. 19–8709. Greer *v.* United States. C. A. 11th Cir. [Certiorari granted, 592 U. S. 1162.] Motion of petitioner for leave to file volume II of the joint appendix under seal granted.

No. 20–287. Johnson *v.* Precythe et al. C. A. 8th Cir. The parties are directed to file supplemental letter briefs addressing the following question: "Given that the District Court dismissed without prejudice, would petitioner be barred from filing a new complaint that proposes the firing squad as the alternative method of execution?" Petitioner's brief, not to exceed five pages, is to be filed with the Clerk and served upon opposing counsel on or before Monday, April 12, 2021. Respondents' brief, not to exceed five pages, is to be filed with the Clerk and served upon opposing counsel on or before Monday, April 26, 2021.

No. 20–444. United States *v.* Gary. C. A. 4th Cir. [Certiorari granted, 592 U. S. 1163.] Motion of petitioner for leave to file volume II of the joint appendix under seal granted.

No. 20–7342. In re Vigliotti; and
No. 20–7349. In re Mellard. Petitions for writs of habeas corpus denied.

No. 20–7366. In re Alexander. 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. 20–1035. IN RE KIMBRELL. Petition for writ of mandamus denied.

No. 20–6950. IN RE POULLARD. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus 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. 20–1209. IN RE ROGERS. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 20–601. CAMERON, ATTORNEY GENERAL OF KENTUCKY *v.* EMW WOMEN'S SURGICAL CENTER, P. S. C., ET AL. C. A. 6th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 831 Fed. Appx. 748.

Certiorari Denied

No. 20–567. OHIO EX REL. FELTNER *v.* CUYAHOGA COUNTY BOARD OF REVISION ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 155 Ohio St. 3d 1403, 2019-Ohio-943, 119 N. E. 3d 431.

No. 20–605. WHOLEAN ET AL. *v.* CSEA SEIU LOCAL 2001 ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 955 F. 3d 332.

No. 20–690. HAN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 962 F. 3d 568.

No. 20–730. COOPER ET AL. *v.* TOKYO ELECTRIC POWER COMPANY HOLDINGS, INC., AKA TEPCO, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 960 F. 3d 549.

No. 20–960. KHUE NGUYEN *v.* HAI PHU NGUYEN, AS ADMINISTRATOR OF THE ESTATE OF THIN THI TA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 355.

No. 20–965. PATEL ET AL. *v.* CHAVEZ. Ct. App. Cal., 2d App. Dist., Div. 1. Certiorari denied. Reported below: 48 Cal. App. 5th 484, 261 Cal. Rptr. 3d 829.

No. 20–980. SHARMA *v.* SANTANDER BANK. C. A. 1st Cir. Certiorari denied.

No. 20–984. GREWAL, ATTORNEY GENERAL OF NEW JERSEY *v.* DEFENSE DISTRIBUTED ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 971 F. 3d 485.

No. 20–987. SPIELBAUER LAW OFFICE *v.* MIDLAND FUNDING, LLC, ET AL. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 20–988. SMITH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. *v.* TYSON. C. A. 3d Cir. Certiorari denied. Reported below: 976 F. 3d 382.

No. 20–998. MAMA JO'S, INC., DBA BERRIES *v.* SPARTA INSURANCE CO. C. A. 11th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 868.

No. 20–1001. COLUMBIA MHC EAST, LLC, ET AL. *v.* STEWART ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 826 Fed. Appx. 443.

No. 20–1007. STEWART *v.* RRL HOLDING COMPANY OF OHIO, LLC, ET AL. Ct. App. Ohio, 10th App Dist., Franklin County. Certiorari denied. Reported below: 2020-Ohio-199.

No. 20–1011. SANAI *v.* STAUB ET AL. (Reported below: 801 Fed. Appx. 505); and SANAI *v.* BORENSTEIN ET AL. (809 Fed. Appx. 353). C. A. 9th Cir. Certiorari denied.

No. 20–1016. KOSTERLITZ *v.* S/V KNOTTA KLU ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 735.

No. 20–1022. COULTER *v.* JAMSAN HOTEL MANAGEMENT, INC., ET AL. App. Ct. Mass. Certiorari denied. Reported below: 97 Mass. App. 1124, 147 N. E. 3d 1116.

No. 20–1023. COULTER *v.* IGNELZI ET AL. Sup. Ct. Pa. Certiorari denied.

No. 20–1027. COLEMAN *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 2019–1458 (La. App. 1 Cir. 6/12/20), 305 So. 3d 878.

No. 20–1049. OKLAHOMA CITY, OKLAHOMA, ET AL. *v.* MCCRAW ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 973 F. 3d 1057.

No. 20–1051. JUDICIAL WATCH, INC. *v.* CLINTON ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 973 F. 3d 106.

No. 20–1055. TRICOLI *v.* WATTS ET AL. Ct. App. Ga. Certiorari denied.

No. 20–1065. HUDLER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 239 A. 3d 104.

No. 20–1080. MAY *v.* SHINN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, REHABILITATION AND REENTRY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 954 F. 3d 1194 and 807 Fed. Appx. 632.

No. 20–1087. TUNNELL *v.* PUBLIC SCHOOL RETIREMENT SYSTEM OF MISSOURI ET AL. C. A. 8th Cir. Certiorari denied.

No. 20–1090. BOYD *v.* DEPARTMENT OF VETERANS AFFAIRS ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–1101. HARDEN *v.* COMCAST CORP. C. A. 7th Cir. Certiorari denied. Reported below: 819 Fed. Appx. 445.

No. 20–1105. FUTIA ET AL. *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 837 Fed. Appx. 17.

No. 20–1109. CHATMAN *v.* ARROWHEAD CREDIT UNION. C. A. 9th Cir. Certiorari denied.

No. 20–1127. PADUANO *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 20–1175. DEMUTH *v.* SMALL BUSINESS ADMINISTRATION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 819 Fed. Appx. 23.

No. 20–1179. COLE *v.* PRN REAL ESTATE & INVESTMENTS, LTD., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 829 Fed. Appx. 399.

No. 20–1181. THOMPSON *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 245 Md. App. 450, 226 A. 3d 871.

No. 20–1190. SIMMONS *v.* MCDONOUGH, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 964 F. 3d 1381.

No. 20–1193. LEE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 20–1198. WILTZ *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 595 S. W. 3d 930.

No. 20–1205. CRAIG *v.* UNITED STATES; and
No. 20–7204. FAITHFUL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 231.

No. 20–1216. KHALAF *v.* FORD MOTOR CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 973 F. 3d 469.

No. 20–5908. CLOTAIRE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 963 F. 3d 1288.

No. 20–6409. PEREZ RANGEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 319.

No. 20–6602. BOUCHER *v.* LYONS. Sup. Ct. N. H. Certiorari denied.

No. 20–6719. JACKSON *v.* WILLIAMS. App. Ct. Ill., 3d Dist. Certiorari denied.

No. 20–6912. RAMBO *v.* NOGAN, ADMINISTRATOR, EAST JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 20–6919. NAPPER *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 20–6922. BONNELL *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 159 Ohio St. 3d 1413, 2020-Ohio-3276, 147 N. E. 3d 647.

No. 20–6929. HUGUELEY *v.* MAYS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 964 F. 3d 489.

No. 20–6934. CARTWRIGHT *v.* SILVER CROSS HOSPITAL ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 962 F. 3d 933.

No. 20–6935. WOFFORD *v.* WOODS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 969 F. 3d 685.

No. 20–6937. NEWSOME *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 302.

No. 20–6938. MILHOUSE *v.* CAMBA INC. STAFF MEMBERS ET AL. C. A. 2d Cir. Certiorari denied.

No. 20–6940. THOMAS *v.* MADDEN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–6951. TORRES PALOMO *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 20–6955. SKILLINGS *v.* CITY OF NEW YORK, NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 173 App. Div. 3d 799, 105 N. Y. S. 3d 431.

No. 20–6956. STUART *v.* ERICKSON LIVING MANAGEMENT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 682.

No. 20–6968. LIGHT *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 20–6981. WALTER *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied. Reported below: 588 S. W. 3d 682.

No. 20–6986. ESCUDERO *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 189.

No. 20–6988. CREATER *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 2020 IL App (4th) 180126–U.

No. 20–6996. BOOTH *v.* BERRY, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 20–6997. BRYAN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 20–6998. BROCKINGTON *v.* HAVNER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 233.

No. 20–7035. SLAUGHTER *v.* FERGUSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PHOENIX, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 816 Fed. Appx. 658.

No. 20–7054. WEBER *v.* QUINLAN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 792 Fed. Appx. 214.

No. 20–7055. VERRETT *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 20–7057. WALLER *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2020 Ark. 381.

No. 20–7106. HALPER *v.* MOORE ET AL. Ct. App. Colo. Certiorari denied.

No. 20–7129. TORRENCE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 227 A. 3d 393.

No. 20–7130. COBBINS *v.* HINTHORNE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 20–7190. SANCHEZ *v.* JACQUES, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 833 Fed. Appx. 170.

No. 20–7195. MAYS, AKA MAYES *v.* LEWIS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 215.

No. 20–7200. BURCIAGA *v.* MADDEN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 827 Fed. Appx. 676.

No. 20–7229. TUBBS *v.* LONG, COMMISSIONER, TENNESSEE DEPARTMENT OF SAFETY AND HOMELAND SECURITY. Ct. App. Tenn. Certiorari denied. Reported below: 610 S. W. 3d 1.

No. 20–7243. LINEHAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 835 Fed. Appx. 914.

No. 20–7247. POWELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 836 Fed. Appx. 391.

No. 20–7254. VALENZUELA *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 836 Fed. Appx. 507.

No. 20–7256. COBB *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 970 F. 3d 319.

No. 20–7259. GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 831 Fed. Appx. 399.

No. 20–7268. BRISCOE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 863.

No. 20–7272. BAKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 976 F. 3d 636.

No. 20–7273. BRIGAUDIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–7276. MONTAGUE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 831 Fed. Appx. 676.

No. 20–7278. FRIEDMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 742.

No. 20–7283. LARVIE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–7290. HANUMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 662.

No. 20–7292. STASZAK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 20–7294. SABATINO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 850.

No. 20–7301. BOLATETE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 977 F. 3d 1022.

No. 20–7305. HARRIS *v.* UNITED STATES; and STEWARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 20–1081. ILLINOIS REPUBLICAN PARTY ET AL. *v.* PRITZKER, GOVERNOR OF ILLINOIS. C. A. 7th Cir. Reported below: 973 F. 3d 760.

No. 20–569. ELIM ROMANIAN PENTECOSTAL CHURCH ET AL. *v.* PRITZKER, GOVERNOR OF ILLINOIS. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 962 F. 3d 341.

No. 20–830. WASHINGTON *v.* ALI. Sup. Ct. Wash. Motion of Criminal Justice Legal Foundation for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 196 Wash. 2d 220, 474 P. 3d 507.

No. 20–831. WASHINGTON *v.* DOMINGO-CORNELIO. Sup. Ct. Wash. Motion of Criminal Justice Legal Foundation for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 196 Wash. 2d 255, 474 P. 3d 524.

No. 20–1081. ILLINOIS REPUBLICAN PARTY ET AL. *v.* PRITZKER, GOVERNOR OF ILLINOIS. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 973 F. 3d 760.

No. 20–1170. FEINMAN *v.* VOLKSWAGEN GROUP OF AMERICA, INC. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 20–1187. CARMICHAEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 20–5795. TEDFORD *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 658 Pa. 387, 228 A. 3d 891.

No. 20–7250. HUSBAND *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 820 Fed. Appx. 457.

No. 20–7270. BARMORE *v.* NICKLAUS, WARDEN. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition.

Rehearing Denied

No. 20–671. IN RE SHAH, 592 U. S. 1218;

No. 20–751. KRAPACS *v.* FLORIDA BAR, 592 U. S. 1178;

No. 20–6093. ABUTALEB *v.* ABUTALEB, 592 U. S. 1271;

No. 20–6363. CABEZAS *v.* UNITED STATES, 592 U. S. 1188;

No. 20–6443. MYERS *v.* ROWELL ET AL., 592 U. S. 1272;

No. 20–6546. NIMMER *v.* HEAVICAN, CHIEF JUSTICE, SUPREME COURT OF NEBRASKA, ET AL., 592 U. S. 1273; and

No. 20–6649. EL MUJADDID *v.* BREWER ET AL.; and EL MUJADDID *v.* NEW JERSEY, 592 U. S. 1275. Petitions for rehearing denied.

APRIL 1, 2021

Dismissal Under Rule 46

No. 20–7302. ALLEN *v.* RENTGROW, INC., ET AL. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 830 Fed. Appx. 418.