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OF

THE SUPREME COURT

April 5 Through May 21, 2021

REBECCA A. WOMELDORF
REPORTER OF DECISIONS

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OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

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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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NOTES:

This volume provides the permanent United States Reports citation for all reported cases. Cases reported before page 901 are those decided with opinions of the Court or decisions *per curiam*. Cases reported on page 901 *et seq.* are those in which orders were entered. Although the Table of Cases Reported does not list orders denying a petition for writ of certiorari, such orders are included chronologically in this volume.

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.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2020

GOOGLE LLC *v.* ORACLE AMERICA, INC.

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

No. 18–956. Argued October 7, 2020—Decided April 5, 2021

Oracle America, Inc., owns a copyright in Java SE, a computer platform that uses the popular Java computer programming language. In 2005, Google acquired Android and sought to build a new software platform for mobile devices. To allow the millions of programmers familiar with the Java programming language to work with its new Android platform, Google copied roughly 11,500 lines of code from the Java SE program. The copied lines are part of a tool called an Application Programming Interface (API). An API allows programmers to call upon prewritten computing tasks for use in their own programs. Over the course of protracted litigation, the lower courts have considered (1) whether Java SE's owner could copyright the copied lines from the API, and (2) if so, whether Google's copying constituted a permissible "fair use" of that material freeing Google from copyright liability. In the proceedings below, the Federal Circuit held that the copied lines are copyrightable. After a jury then found for Google on fair use, the Federal Circuit reversed, concluding that Google's copying was not a fair use as a matter of law. Prior to remand for a trial on damages, the Court agreed to review the Federal Circuit's determinations as to both copyrightability and fair use.

Held: Google's copying of the Java SE API, which included only those lines of code that were needed to allow programmers to put their accrued talents to work in a new and transformative program, was a fair use of that material as a matter of law. Pp. 16–40.

(a) Copyright and patents, the Constitution says, serve to "promote the Progress of Science and the useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Art. I, § 8, cl. 8. Copyright encourages the production of works that others might cheaply reproduce by granting the author an exclusive right to produce the work for a period of time. Because such exclusivity may trigger negative consequences, Congress and the courts have limited the scope of copyright protection to ensure that a copyright holder's monopoly does not harm the public interest.

This case implicates two of the limits in the current Copyright Act. First, the Act provides that copyright protection cannot extend to "any idea, procedure, process, system, method of operation, concept, principle, or discovery . . . ." 17 U. S. C. § 102(b). Second, the Act provides that a copyright holder may not prevent another person from making a "fair use" of a copyrighted work. § 107. Google's petition asks the Court to apply both provisions to the copying at issue here. To decide no more than is necessary to resolve this case, the Court assumes for argument's sake that the copied lines can be copyrighted, and focuses on whether Google's use of those lines was a "fair use." Pp. 16–20.

(b) The doctrine of "fair use" is flexible and takes account of changes in technology. Computer programs differ to some extent from many other copyrightable works because computer programs always serve a functional purpose. Because of these differences, fair use has an important role to play for computer programs by providing a context-based check that keeps the copyright monopoly afforded to computer programs within its lawful bounds. Pp. 20–23.

(c) The "fair use" question is a mixed question of fact and law. Reviewing courts should appropriately defer to the jury's findings of underlying facts, but the ultimate question whether those facts amount to a fair use is a legal question for judges to decide *de novo*. This approach does not violate the Seventh Amendment's prohibition on courts reexamining facts tried by a jury, because the ultimate question here is one of law, not fact. The "right of trial by jury" does not include the right to have a jury resolve a fair use defense. Pp. 23–25.

(d) To determine whether Google's limited copying of the Java API here constitutes fair use, the Court examines the four guiding factors set forth in the Copyright Act's fair use provision: the purpose and character of the use; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the effect of the use upon the potential market for or value of the copyrighted work. § 107. The Court has recognized that some factors may prove more important in some contexts than in others. *Campbell* v. *Acuff-Rose Music, Inc.*, 510 U. S. 569, 577. Pp. 26–40.

(1) The nature of the work favors fair use. The copied lines of code are part of a "user interface" that provides a way for programmers to access prewritten computer code through the use of simple commands. As a result, this code is different from many other types of code, such as the code that actually instructs the computer to execute a task. As part of an interface, the copied lines are inherently bound together with uncopyrightable ideas (the overall organization of the API) and the creation of new creative expression (the code independently written by Google). Unlike many other computer programs, the value of the copied lines is in significant part derived from the investment of users (here computer programmers) who have learned the API's system. Given these differences, application of fair use here is unlikely to undermine the general copyright protection that Congress provided for computer programs. Pp. 26–29.

(2) The inquiry into the "the purpose and character" of the use turns in large measure on whether the copying at issue was "transformative," *i.e.*, whether it "adds something new, with a further purpose or different character." *Campbell*, 510 U. S., at 579. Google's limited copying of the Java API is a transformative use. Google copied only what was needed to allow programmers to work in a different computing environment without discarding a portion of a familiar programming language. Google's purpose was to create a different task-related system for a different computing environment (smartphones) and to create a platform—the Android platform—that would help achieve and popularize that objective. The record demonstrates numerous ways in which reimplementing an interface can further the development of computer programs. Google's purpose was therefore consistent with that creative progress that is the basic constitutional objective of copyright itself. Pp. 29–33.

(3) Google copied approximately 11,500 lines of declaring code from the API, which amounts to virtually all the declaring code needed to call up hundreds of different tasks. Those 11,500 lines, however, are only 0.4 percent of the entire Java API at issue, which consists of 2.86 million total lines. In considering "the amount and substantiality of the portion used" in this case, the 11,500 lines of code should be viewed as one small part of the considerably greater whole. As part of an interface, the copied lines of code are inextricably bound to other lines of code that are accessed by programmers. Google copied these lines not because of their creativity or beauty, but because they would allow programmers to bring their skills to a new smartphone computing environment. The "substantiality" factor will generally weigh in favor of

fair use where, as here, the amount of copying was tethered to a valid, and transformative, purpose. Pp. 33–35.

(4) The fourth statutory factor focuses upon the "effect" of the copying in the "market for or value of the copyrighted work." §107(4). Here the record showed that Google's new smartphone platform is not a market substitute for Java SE. The record also showed that Java SE's copyright holder would benefit from the reimplementation of its interface into a different market. Finally, enforcing the copyright on these facts risks causing creativity-related harms to the public. When taken together, these considerations demonstrate that the fourth factor—market effects—also weighs in favor of fair use. Pp. 35–40.

(e) The fact that computer programs are primarily functional makes it difficult to apply traditional copyright concepts in that technological world. Applying the principles of the Court's precedents and Congress' codification of the fair use doctrine to the distinct copyrighted work here, the Court concludes that Google's copying of the API to reimplement a user interface, taking only what was needed to allow users to put their accrued talents to work in a new and transformative program, constituted a fair use of that material as a matter of law. In reaching this result, the Court does not overturn or modify its earlier cases involving fair use. P. 40.

886 F. 3d 1179, reversed and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SOTOMAYOR, KAGAN, GORSUCH, and KAVANAUGH, JJ., joined. THOMAS, J., filed a dissenting opinion, in which ALITO, J., joined, *post*, p. 43. BARRETT, J., took no part in the consideration or decision of the case.

Thomas C. Goldstein argued the cause for petitioner. With him on the briefs were *Sarah E. Harrington*, *Kevin K. Russell*, *Daniel Woofter*, *Erica Oleszczuk Evans*, *Michael S. Kwun*, *Bruce W. Baber*, *Catherine Lacavera*, *Lisa S. Blatt*, *David M. Krinsky*, *Sarah M. Harris*, *Robert A. Van Nest*, *Eugene M. Paige*, and *Reid P. Mullen.*

E. Joshua Rosenkranz argued the cause for respondent. With him on the brief were *Annette L. Hurst*, *Lisa T. Simpson*, *Andrew D. Silverman*, *Matthew R. Shahabian*, *Jeremy Peterman*, *Hannah Garden-Monheit*, *Dorian E. Daley*, *Deborah K. Miller*, *Dale M. Cendali*, and *Joshua L. Simmons.*

Deputy Solicitor General Stewart argued the cause for the United States as *amicus curiae* urging affirmance.

With him on the brief were *Solicitor General Francisco*, *Assistant Attorney General Hunt*, *Matthew Guarnieri*, *Mark R. Freeman*, *Daniel Tenny*, *Sonia M. Carson*, *Regan A. Smith*, *Kevin R. Amer*, *Michael J. Walsh, Jr.*, and *Megan Heller.**

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*Briefs of *amici curiae* urging reversal were filed for the American Antitrust Institute by *Randy M. Stutz*; for the American Library Association et al. by *Brandon Butler*; for the Auto Care Association et al. by *Seth D. Greenstein* and *Robert S. Schwartz*; for the Center for Democracy and Technology et al. by *Joseph C. Gratz, Mark A. Lemley*, and *Lisa A. Hayes*; for the Computer & Communications Industry Association et al. by *Jonathan Band* and *Matt Schruers*; for Copyright Scholars by *Rebecca Tushnet, pro se*; for the Developers Alliance by *James H. Hulme* and *Bruce Gustafson*; for the Electronic Frontier Foundation by *Michael Barclay* and *Corynne McSherry*; for Empirical Legal Researchers by *Elie I. Herman*; for Engine Advocacy by *Jef Pearlman*; for International Business Machines Corp. et al. by *James W. Dabney, Richard M. Koehl, James R. Klaiber, Stefanie M. Garibyan, Steven M. Purdy,* and *Jeffrey R. Kaufman*; for Microsoft Corp. by *Jeffrey A. Lamken* and *Michael G. Pattillo, Jr.*; for the Python Software Foundation et al. by *Van Lindberg* and *Jill Wheaton*; for the Retail Litigation Center, Inc., by *Jonathan S. Massey, Deborah R. White,* and *Matthew M. Collette*; for Rimini Street, Inc., by *Mark A. Perry, Jeremy M. Christiansen, Blaine H. Evanson,* and *Joseph A. Gorman*; for the R Street Institute et al. by *Charles Duan* and *Meredith F. Rose*; for Small, Medium, and Open Source Technology Organizations by *Jason M. Schultz* and *Christopher J. Morten*; for Software and System Developers and Engineers for U. S. Government Agencies by *Andrew P. Bridges*; for the Software Freedom Law Center by *Eben Moglen*; for Software Innovators et al. by *J. Carl Cecere*; for Glynn Lunney by *Mr. Lunney, pro se*; for Peter S. Menell et al. by *Mr. Menell, pro se*; for 72 Intellectual Property Scholars by *Catherine Crump* and *Pamela Samuelson*; and for 83 Computer Scientists by *Phillip R. Malone.*

Briefs of *amici curiae* urging affirmance were filed for the American Conservative Union Foundation by *David L. Applegate*; for the Association of American Publishers, Inc., by *Maria A. Pallante*; for the Center for Medicine in the Public Interest by *Edward A. Pennington*; for The Committee for Justice by *Ryan J. Walsh* and *Curt Levey*; for Consumers' Research by *Thomas R. McCarthy, William S. Consovoy,* and *Jeffrey M. Harris*; for the Copyright Alliance by *Ian Heath Gershengorn* and *Devi M. Rao*; for the Digital Justice Foundation by *Edward F. Cunningham*; for Dolby Laboratories, Inc., by *Garrard R. Beeney*; for Former Congressmen by *William A. Isaacson*; for the Hudson Institute by *Erik S. Jaffe* and

JUSTICE BREYER delivered the opinion of the Court.

Oracle America, Inc., is the current owner of a copyright in Java SE, a computer program that uses the popular Java computer programming language. Google, without permission, has copied a portion of that program, a portion that enables a programmer to call up prewritten software that, together with the computer's hardware, will carry out a large number of specific tasks. The lower courts have considered (1) whether Java SE's owner could copyright the portion that Google copied, and (2) if so, whether Google's copying nonetheless constituted a "fair use" of that material,

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Gene C. Schaerr; for the Interdisciplinary Research Team on Programmer Creativity by *Ralph D. Clifford*; for the Internet Accountability Project by *John Thorne*; for The Mathworks, Inc., by *David C. Frederick* and *Jonathan T. Foot*; for the News Media Alliance by *Robert P. LoBue*; for the Recording Industry Association of America et al. by *Frank P. Scibilia* and *Donald S. Zakarin*; for the SAS Institute, Inc., by *Peter K. Stris, Elizabeth Rogers Brannen, Dana Berkowitz, Douglas D. Geyser, Jhaniel James,* and *John Stokes*; for Synopsys, Inc., by *William M. Jay, Andrew Kim,* and *I. Neel Chatterjee*; for Helienne Lindvall et al. by *Charles J. Sanders*; for Scott McNealy by *Celeste L. M. Koeleveld*; for Arthur R. Miller by *Theodore Stevenson III*; for Ralph Oman by *Marc R. Lewis*; for Eugene H. Spafford et al. by *Anne M. Cappella*; for Joseph M. Tucci et al. by *David W. Shapiro*; for 9 Professors of Intellectual Property by *Robert S. Friedman*; for 10 Creators' Rights Organizations by *Nancy E. Wolff*; and for 25 Professors of Journalism et al. by *Daniel J. Brooks.*

Briefs of *amici curiae* were filed for Alliance of U. S. Startups and Investors for Jobs by *Robert P. Taylor* and *David Boundy*; for the American Intellectual Property Law Association by *Jennifer Librach Nall, Barbara A. Fiacco, Jeffrey Han, Janice L. Ta,* and *Aaron M. Streett*; for the American Legislative Exchange Council by *Jonathon P. Hauenschild*; for Civ Pro Professors et al. by *Jaclyn Cherry*; for Copyright Thought Leaders by *Steven Tepp*; for the Motion Picture Association, Inc., by *Robert H. Rotstein, Eleanor M. Lackman,* and *J. Matthew Williams*; for the Robert Rauschenberg Foundation et al. by *John Paul Schnapper-Casteras* and *Carolyn E. Shapiro*; for USTelecom–The Broadband Association by *Russell P. Hanser* and *Jennifer B. Tatel*; and for Michael Risch by *Mr. Risch, pro se.*

thereby freeing Google from copyright liability. The Federal Circuit held in Oracle's favor (*i. e.*, that the portion is copyrightable and Google's copying did not constitute a "fair use"). In reviewing that decision, we assume, for argument's sake, that the material was copyrightable. But we hold that the copying here at issue nonetheless constituted a fair use. Hence, Google's copying did not violate the copyright law.

I

In 2005, Google acquired Android, Inc., a startup firm that hoped to become involved in smartphone software. Google sought, through Android, to develop a software platform for mobile devices like smartphones. 886 F. 3d 1179, 1187 (CA Fed. 2018); App. 137–138, 242–243. A platform provides the necessary infrastructure for computer programmers to develop new programs and applications. One might think of a software platform as a kind of factory floor where computer programmers (analogous to autoworkers, designers, or manufacturers) might come, use sets of tools found there, and create new applications for use in, say, smartphones. (For visual explanations of "platforms" and other somewhat specialized computer-related terms, you might want to look at the material in Appendix A, *infra*.)

Google envisioned an Android platform that was free and open, such that software developers could use the tools found there free of charge. Its idea was that more and more developers using its Android platform would develop ever more Android-based applications, all of which would make Google's Android-based smartphones more attractive to ultimate consumers. Consumers would then buy and use ever more of those phones. *Oracle America, Inc.* v. *Google Inc.*, 872 F. Supp. 2d 974, 978 (ND Cal. 2012); App. 111, 464. That vision required attracting a sizeable number of skilled programmers.

At that time, many software developers understood and wrote programs using the Java programming language, a language invented by Sun Microsystems (Oracle's predecessor). 872 F. Supp. 2d, at 975, 977. About six million programmers had spent considerable time learning, and then using, the Java language. App. 228. Many of those programmers used Sun's own popular Java SE platform to develop new programs primarily for use in desktop and laptop computers. *Id.*, at 151–152, 200. That platform allowed developers using the Java language to write programs that were able to run on any desktop or laptop computer, regardless of the underlying hardware (*i. e.*, the programs were in large part "interoperable"). 872 F. Supp. 2d, at 977. Indeed, one of Sun's slogans was " 'write once, run anywhere.' " 886 F. 3d, at 1186.

Shortly after acquiring the Android firm, Google began talks with Sun about the possibility of licensing the entire Java platform for its new smartphone technology. *Oracle*, 872 F. Supp. 2d, at 978. But Google did not want to insist that all programs written on the Android platform be interoperable. 886 F. 3d, at 1187. As Android's founder explained, "[t]he whole idea about [an] open source [platform] is to have very, very few restrictions on what people can do with it," App. 659, and Sun's interoperability policy would have undermined that free and open business model. Apparently, for reasons related to this disagreement, Google's negotiations with Sun broke down. Google then built its own platform.

The record indicates that roughly 100 Google engineers worked for more than three years to create Google's Android platform software. *Id.*, at 45, 117, 212. In doing so, Google tailored the Android platform to smartphone technology, which differs from desktop and laptop computers in important ways. A smartphone, for instance, may run on a more limited battery or take advantage of GPS technology. *Id.*, at 197–198. The Android platform offered programmers the ability to program for that environment. To build the platform, Google wrote millions of lines of new code. Because

Google wanted millions of programmers, familiar with Java, to be able easily to work with its new Android platform, it also copied roughly 11,500 lines of code from the Java SE program. 886 F. 3d, at 1187. The copied lines of code are part of a tool called an Application Programming Interface, or API.

What is an API? The Federal Circuit described an API as a tool that "allow[s] programmers to use . . . prewritten code to build certain functions into their own programs, rather than write their own code to perform those functions from scratch." *Oracle America, Inc.* v. *Google, Inc.*, 750 F. 3d 1339, 1349 (2014). Through an API, a programmer can draw upon a vast library of prewritten code to carry out complex tasks. For lay persons, including judges, juries, and many others, some elaboration of this description may prove useful.

Consider in more detail just what an API does. A computer can perform thousands, perhaps millions, of different tasks that a programmer may wish to use. These tasks range from the most basic to the enormously complex. Ask the computer, for example, to tell you which of two numbers is the higher number or to sort one thousand numbers in ascending order, and it will instantly give you the right answer. An API divides and organizes the world of computing tasks in a particular way. Programmers can then use the API to select the particular task that they need for their programs. In Sun's API (which we refer to as the Sun Java API), each individual task is known as a "method." The API groups somewhat similar methods into larger "classes," and groups somewhat similar classes into larger "packages." This method-class-package organizational structure is referred to as the Sun Java API's "structure, sequence, and organization," or SSO.

For each task, there is computer code, known as "implementing code," that in effect tells the computer how to execute the particular task you have asked it to perform (such as telling you, of two numbers, which is the higher). See *Oracle*, 872 F. Supp. 2d, at 979–980. The implementing code (which Google independently wrote) is not at issue here. For a single task, the implementing code may be hundreds of lines long. It would be difficult, perhaps impossible, for a programmer to create complex software programs without drawing on prewritten task-implementing programs to execute discrete tasks.

But how do you as the programmer tell the computer which of the implementing code programs it should choose, *i. e.*, which task it should carry out? You do so by entering into your own program a command that corresponds to the specific task and calls it up. Those commands, known as "method calls," help you carry out the task by choosing those programs written in implementing code that will do the trick, *i. e.*, that will instruct the computer so that your program will find the higher of two numbers. If a particular computer might perform, say, a million different tasks, different method calls will tell the computer which of those tasks to choose. Those familiar with the Java language already know countless method calls that allow them to invoke countless tasks.

And how does the method call (which a programmer types) actually locate and invoke the particular implementing code that it needs to instruct the computer how to carry out a particular task? It does so through another type of code, which the parties have labeled "declaring code." Declaring code is part of the API. For each task, the specific command entered by the programmer matches up with specific declaring code inside the API. That declaring code provides both the name for each task and the location of each task within the API's overall organizational system (*i. e.*, the placement of a method within a particular class and the placement of a class within a particular package). In this sense, the declaring code and the method call form a link, allowing the programmer to draw upon the thousands of prewritten tasks, written in implementing code. See *id.*, at 979–980. Without that declaring code, the method calls entered by the programmer would not call up the implementing code.

The declaring code therefore performs at least two important functions in the Sun Java API. The first, more obvious, function is that the declaring code enables a set of shortcuts for programmers. By connecting complex implementing code with method calls, it allows a programmer to pick out from the API's task library a particular task without having to learn anything more than a simple command. For example, a programmer building a new application for personal banking may wish to use various tasks to, say, calculate a user's balance or authenticate a password. To do so, she need only learn the method calls associated with those tasks. In this way, the declaring code's shortcut function is similar to a gas pedal in a car that tells the car to move faster or the QWERTY keyboard on a typewriter that calls up a certain letter when you press a particular key. As those analogies demonstrate, one can think of the declaring code as part of an *interface* between human beings and a machine.

The second, less obvious, function is to reflect the way in which Java's creators have divided the potential world of different tasks into an actual world, *i. e.*, precisely which set of potentially millions of different tasks we want to have our Java-based computer systems perform and how we want those tasks arranged and grouped. In this sense, the declaring code performs an organizational function. It determines the structure of the task library that Java's creators have decided to build. To understand this organizational system, think of the Dewey Decimal System that categorizes books into an accessible system or a travel guide that arranges a city's attractions into different categories. Language itself provides a rough analogy to the declaring code's organizational feature, for language itself divides into sets of concepts a world that in certain respects other languages might have divided differently. The developers of Java, for example, decided to place a method called "draw image" inside of a class called "graphics."

Consider a comprehensive, albeit farfetched, analogy that illustrates how the API is actually used by a programmer. Imagine that you can, via certain keystrokes, instruct a robot to move to a particular file cabinet, to open a certain drawer, and to pick out a specific recipe. With the proper recipe in hand, the robot then moves to your kitchen and gives it to a cook to prepare the dish. This example mirrors the API's task-related organizational system. Through your simple command, the robot locates the right recipe and hands it off to the cook. In the same way, typing in a method call prompts the API to locate the correct implementing code and hand it off to your computer. And importantly, to select the dish that you want for your meal, you do not need to know the recipe's contents, just as a programmer using an API does not need to learn the implementing code. In both situations, learning the simple command is enough.

Now let us consider the example that the District Court used to explain the precise technology here. *Id.*, at 980–981. A programmer wishes, as part of her program, to determine which of two integers is the larger. To do so in the Java language, she will first write **java.lang**. Those words (which we have put in bold type) refer to the "package" (or by analogy to the file cabinet). She will then write **Math**. That word refers to the "class" (or by analogy to the drawer). She will then write **max**. That word refers to the "method" (or by analogy to the recipe). She will then make two parentheses ( ). And, in between the parentheses she will put two integers, say 4 and 6, that she wishes to compare. The whole expression—the method call—will look like this: "**java.lang.Math.max(4, 6)**." The use of this expression will, by means of the API, call up a task-implementing program that will determine the higher number.

In writing this program, the programmer will use the very symbols we have placed in bold in the precise order we have placed them. But the symbols by themselves do nothing. She must also use software that connects the symbols to the equivalent of file cabinets, drawers, and files. The API is that software. It includes both the declaring code that links each part of the method call to the particular task-implementing program, and the implementing code that actually carries it out. (For an illustration of this technology, see Appendix B, *infra*.)

Now we can return to the copying at issue in this case. Google did not copy the task-implementing programs, or implementing code, from the Sun Java API. It wrote its own task-implementing programs, such as those that would determine which of two integers is the greater or carry out any other desired (normally far more complex) task. This implementing code constitutes the vast majority of both the Sun Java API and the API that Google created for Android. App. 212. For most of the packages in its new API, Google also wrote its own declaring code. For 37 packages, however, Google copied the declaring code from the Sun Java API. *Id.*, at 106–107. As just explained, that means that, for those 37 packages, Google necessarily copied both the names given to particular tasks and the grouping of those tasks into classes and packages.

In doing so, Google copied that portion of the Sun Java API that allowed programmers expert in the Java programming language to use the "task calling" system that they had already learned. As Google saw it, the 37 packages at issue included those tasks that were likely to prove most useful to programmers working on applications for mobile devices. In fact, "three of these packages were . . . fundamental to being able to use the Java language at all." *Oracle*, 872 F. Supp. 2d, at 982. By using the same declaring code for those packages, programmers using the Android platform can rely on the method calls that they are already familiar with to call up particular tasks (*e. g.*, determining which of two integers is the greater); but Google's own implementing programs carry out those tasks. Without that copying, programmers would need to learn an entirely new system to call up the same tasks.

We add that the Android platform has been successful. Within five years of its release in 2007, Android-based devices claimed a large share of the United States market. *Id.*, at 978. As of 2015, Android sales produced more than $42 billion in revenue. 886 F. 3d, at 1187.

In 2010 Oracle Corporation bought Sun. Soon thereafter Oracle brought this lawsuit in the United States District Court for the Northern District of California.

II

The case has a complex and lengthy history. At the outset Oracle complained that Google's use of the Sun Java API violated both copyright and patent laws. For its copyright claim, Oracle alleged that Google infringed its copyright by copying, for 37 packages, both the literal declaring code and the nonliteral organizational structure (or SSO) of the API, *i. e.*, the grouping of certain methods into classes and certain classes into packages. For trial purposes the District Court organized three proceedings. The first would cover the copyright issues, the second would cover the patent issues, and the third would, if necessary, calculate damages. *Oracle*, 872 F. Supp. 2d, at 975. The court also determined that a judge should decide whether copyright law could protect an API and that the jury should decide whether Google's use of Oracle's API infringed its copyright and, if so, whether a fair use defense nonetheless applied. *Ibid.*

After six weeks of hearing evidence, the jury rejected Oracle's patent claims (which have since dropped out of the case). It also found a limited copyright infringement. It deadlocked as to whether Google could successfully assert a fair use defense. *Id.*, at 976. The judge then decided that, regardless, the API's declaring code was not the kind of creation to which copyright law extended its protection. The court noted that Google had written its own implementing code, which constituted the vast majority of its API. It wrote that "anyone is free under the Copyright Act to write his or her own code to carry out exactly the same" tasks that the Sun Java API picks out or specifies. *Ibid.* Google copied only the declaring code and organizational structure that was necessary for Java-trained programmers to activate familiar tasks (while, as we said, writing its own implementing code). Hence the copied material, in the judge's view, was a "system or method of operation," which copyright law specifically states cannot be copyrighted. *Id.*, at 977 (citing 17 U. S. C. § 102(b)).

On appeal, the Federal Circuit reversed. That court held that both the API's declaring code and its organizational structure could be copyrighted. *Oracle*, 750 F. 3d, at 1354. It pointed out that Google could have written its own declaring code just as it wrote its own implementing code. And because in principle Google might have created a whole new system of dividing and labeling tasks that could be called up by programmers, the declaring code (and the system) that made up the Sun Java API was copyrightable. *Id.*, at 1361.

The Federal Circuit also rejected Oracle's plea that it decide whether Google had the right to use the Sun Java API because doing so was a "fair use," immune from copyright liability. The Circuit wrote that fair use "both permits and requires 'courts to avoid rigid application of the copyright statute when, on occasion, it would stifle the very creativity which that law is designed to foster.'" *Id.*, at 1372–1373. But, it added, this "is not a case in which the record contains sufficient factual findings upon which we could base a de novo assessment of Google's affirmative defense of fair use." *Id.*, at 1377. And it remanded the case for another trial on that question. Google petitioned this Court for a writ of certiorari, seeking review of the Federal Circuit's copyrightability determination. We denied the petition. *Google, Inc.* v. *Oracle America, Inc.*, 576 U. S. 1071 (2015).

On remand the District Court, sitting with a jury, heard evidence for a week. The court instructed the jury to answer one question: Has Google "shown by a preponderance of the evidence that its use in Android" of the declaring code and organizational structure contained in the 37 Sun Java API packages that it copied "constitutes a 'fair use' under the Copyright Act?" App. 294. After three days of deliberation the jury answered the question in the affirmative. *Id.*, at 295. Google had shown fair use.

Oracle again appealed to the Federal Circuit. And the Circuit again reversed the District Court. The Federal Circuit assumed all factual questions in Google's favor. But, it said, the question whether those facts constitute a "fair use" is a question of law. 886 F. 3d, at 1193. Deciding that question of law, the court held that Google's use of the Sun Java API was not a fair use. It wrote that "[t]here is nothing fair about taking a copyrighted work verbatim and using it for the same purpose and function as the original in a competing platform." *Id.*, at 1210. It remanded the case again, this time for a trial on damages.

Google then filed a petition for certiorari in this Court. It asked us to review the Federal Circuit's determinations as to both copyrightability and fair use. We granted its petition.

III

A

Copyright and patents, the Constitution says, are to "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Art. I, § 8, cl. 8. Copyright statutes and case law have made clear that copyright has practical objectives. It grants an author an exclusive right to produce his work (sometimes for a hundred years or more), not as a special reward, but in order to encourage the production of works that others might reproduce more cheaply. At the same time, copyright has negative features. Protection can raise prices to consumers. It can impose special costs, such as the cost of contacting owners to obtain reproduction permission. And the exclusive rights it awards can sometimes stand in the way of others exercising their own creative powers. See generally *Twentieth Century Music Corp.* v. *Aiken*, 422 U. S. 151, 156 (1975); *Mazer* v. *Stein*, 347 U. S. 201, 219 (1954).

Macaulay once said that the principle of copyright is a "tax on readers for the purpose of giving a bounty to writers." T. Macaulay, Speeches on Copyright 25 (E. Miller ed. 1913). Congress, weighing advantages and disadvantages, will determine the more specific nature of the tax, its boundaries and conditions, the existence of exceptions and exemptions, all by exercising its own constitutional power to write a copyright statute.

Four provisions of the current Copyright Act are of particular relevance in this case. First, a definitional provision sets forth three basic conditions for obtaining a copyright. There must be a "wor[k] of authorship," that work must be "original," and the work must be "fixed in any tangible medium of expression." 17 U. S. C. § 102(a); see also *Feist Publications, Inc.* v. *Rural Telephone Service Co.*, 499 U. S. 340, 345 (1991) (explaining that copyright requires some original "creative spark" and therefore does not reach the facts that a particular expression describes).

Second, the statute lists certain kinds of works that copyright can protect. They include "literary," "musical," "dramatic," "motion pictur[e]," "architectural," and certain other works. § 102(a). In 1980, Congress expanded the reach of the Copyright Act to include computer programs. And it defined "computer program" as " 'a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.' " § 10, 94 Stat. 3028 (codified at 17 U. S. C. § 101).

Third, the statute sets forth limitations on the works that can be copyrighted, including works that the definitional provisions might otherwise include. It says, for example, that copyright protection cannot be extended to "any idea, procedure, process, system, method of operation, concept, principle, or discovery . . . ." § 102(b). These limitations, along with the need to "fix" a work in a "tangible medium of expression," have often led courts to say, in shorthand form, that, unlike patents, which protect novel and useful ideas, copyrights protect "expression" but not the "ideas" that lie behind it. See *Sheldon* v. *Metro-Goldwyn Pictures Corp.*, 81 F. 2d 49, 54 (CA2 1936) (Hand, J.); B. Kaplan, An Unhurried View of Copyright 46–52 (1967).

Fourth, Congress, together with the courts, has imposed limitations upon the scope of copyright protection even in respect to works that are entitled to a copyright. For example, the Copyright Act limits an author's exclusive rights in performances and displays, § 110, or to performances of sound recordings, § 114. And directly relevant here, a copyright holder cannot prevent another person from making a "fair use" of copyrighted material. § 107.

We have described the "fair use" doctrine, originating in the courts, as an "equitable rule of reason" that "permits courts to avoid rigid application of the copyright statute when, on occasion, it would stifle the very creativity which that law is designed to foster." *Stewart* v. *Abend*, 495 U. S. 207, 236 (1990) (internal quotation marks omitted). The statutory provision that embodies the doctrine indicates, rather than dictates, how courts should apply it. The provision says:

> "[T]he fair use of a copyrighted work, . . . for purposes such as criticism, comment, news reporting, teaching . . . scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

"(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

"(2) the nature of the copyrighted work;

"(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

"(4) the effect of the use upon the potential market for or value of the copyrighted work." § 107.

In applying this provision, we, like other courts, have understood that the provision's list of factors is not exhaustive (note the words "include" and "including"), that the examples it sets forth do not exclude other examples (note the words "such as"), and that some factors may prove more important in some contexts than in others. See *Campbell* v. *Acuff-Rose Music, Inc.*, 510 U. S. 569, 577 (1994); *Harper & Row, Publishers, Inc.* v. *Nation Enterprises*, 471 U. S. 539, 560 (1985); see also Leval, Toward a Fair Use Standard, 103 Harv. L. Rev. 1105, 1110 (1990) (Leval) ("The factors do not represent a score card that promises victory to the winner of the majority"). In a word, we have understood the provision to set forth general principles, the application of which requires judicial balancing, depending upon relevant circumstances, including "significant changes in technology." *Sony Corp. of America* v. *Universal City Studios, Inc.*, 464 U. S. 417, 430 (1984); see also *Aiken*, 422 U. S., at 156 ("When technological change has rendered its literal terms ambiguous, the Copyright Act must be construed in light of its basic purpose").

B

Google's petition for certiorari poses two questions. The first asks whether Java's API is copyrightable. It asks us to examine two of the statutory provisions just mentioned, one that permits copyrighting computer programs and the other that forbids copyrighting, *e. g.*, "process[es]," "system[s]," and "method[s] of operation." Pet. for Cert. 12. Google believes that the API's declaring code and organization fall into these latter categories and are expressly excluded from copyright protection. The second question asks us to determine whether Google's use of the API was a "fair use." Google believes that it was.

A holding for Google on either question presented would dispense with Oracle's copyright claims. Given the rapidly changing technological, economic, and business-related circumstances, we believe we should not answer more than is necessary to resolve the parties' dispute. We shall assume, but purely for argument's sake, that the entire Sun Java API falls within the definition of that which can be copyrighted. We shall ask instead whether Google's use of part of that API was a "fair use." Unlike the Federal Circuit, we conclude that it was.

IV

The language of § 107, the "fair use" provision, reflects its judge-made origins. It is similar to that used by Justice Story in *Folsom* v. *Marsh*, 9 F. Cas. 342, 348 (No. 4,901) (CC Mass. 1841). See *Campbell*, 510 U. S., at 576 (noting how "Justice Story's summary [of fair use considerations] is discernable" in § 107). That background, as well as modern courts' use of the doctrine, makes clear that the concept is flexible, that courts must apply it in light of the sometimes conflicting aims of copyright law, and that its application may well vary depending upon context. Thus, copyright's protection may be stronger where the copyrighted material is fiction, not fact, where it consists of a motion picture rather than a news broadcast, or where it serves an artistic rather than a utilitarian function. See, *e. g.*, *Stewart*, 495 U. S., at 237–238; *Harper & Row*, 471 U. S., at 563; see also 4 M. Nimmer & D. Nimmer, Copyright § 13.05[A] [2][a] (2019) (hereinafter Nimmer on Copyright) ("[C]opyright protection is narrower, and the corresponding application of the fair use defense greater, in the case of factual works than in the case of works of fiction or fantasy"). Similarly, courts have held that in some circumstances, say, where copyrightable material is bound up with uncopyrightable material, copyright protection is "thin." See *Feist*, 499 U. S., at 349 (noting that "the copyright in a factual compilation is thin"); see also *Experian Information Solutions, Inc.* v. *Nationwide Marketing Servs. Inc.*, 893 F. 3d 1176, 1186 (CA9 2018) ("In the context of factual compilations, . . . there can be no infringement unless the works are virtually identical" (internal quotation marks omitted)).

Generically speaking, computer programs differ from books, films, and many other "literary works" in that such programs almost always serve functional purposes. These and other differences have led at least some judges to complain that "[a]pplying copyright law to computer programs is like assembling a jigsaw puzzle whose pieces do not quite fit." *Lotus Development Corp.* v. *Borland Int'l, Inc.*, 49 F. 3d 807, 820 (CA1 1995) (Boudin, J., concurring).

These differences also led Congress to think long and hard about whether to grant computer programs copyright protection. In 1974, Congress established a National Commission on New Technological Uses of Copyrighted Works (CONTU) to look into the matter. §§201–208, 88 Stat. 1873–1875. After several years of research, CONTU concluded that the "availability of copyright protection for computer programs is desirable." Final Report 11 (July 31, 1978). At the same time, it recognized that computer programs had unique features. Mindful of not "unduly burdening users of programs and the general public," it wrote that copyright "should not grant anyone more economic power than is necessary to achieve the incentive to create." *Id.*, at 12. And it believed that copyright's existing doctrines (*e. g.*, fair use), applied by courts on a case-by-case basis, could prevent holders from using copyright to stifle innovation. *Ibid.* ("Relatively few changes in the Copyright Act of 1976 are required to attain these objectives"). Congress then wrote computer program protection into the law. See §10, 94 Stat. 3028.

The upshot, in our view, is that fair use can play an important role in determining the lawful scope of a computer program copyright, such as the copyright at issue here. It can help to distinguish among technologies. It can distinguish between expressive and functional features of computer code where those features are mixed. It can focus on the legitimate need to provide incentives to produce copyrighted material while examining the extent to which yet further protection creates unrelated or illegitimate harms in other markets or to the development of other products. In a word, it can carry out its basic purpose of providing a context-based check that can help to keep a copyright monopoly within its lawful bounds. See H. R. Rep. No. 94–1476, pp. 65–66 (1976) (explaining that courts are to "adapt the doctrine [of fair use] to particular situations on a case-by-case basis" and in light of "rapid technological change"); see, *e. g.*, *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 387 F. 3d 522, 543–545 (CA6 2004) (discussing fair use in the context of copying to preserve compatibility); *Sony Computer Entertainment, Inc.* v. *Connectix Corp.*, 203 F. 3d 596, 603–608 (CA9 2000) (applying fair use to intermediate copying necessary to reverse engineer access to unprotected functional elements within a program); *Sega Enterprises Ltd.* v. *Accolade, Inc.*, 977 F. 2d 1510, 1521–1527 (CA9 1992) (holding that wholesale copying of copyrighted code as a preliminary step to develop a competing product was a fair use).

JUSTICE THOMAS' thoughtful dissent offers a very different view of how (and perhaps whether) fair use has any role to play for computer programs. We are told that no attempt to distinguish among computer code is tenable when considering "the nature of the work," see *post*, at 51, even though there are important distinctions in the ways that programs are used and designed, *post*, at 59 ("The declaring code is what attracted programmers"). We are told that no reuse of code in a new program will ever have a valid "purpose and character," *post*, at 57, even though the reasons for copying computer code may vary greatly and differ from those applicable to other sorts of works, *ibid.* (accepting that copying as part of "reverse engineer[ing] a system to ensure compatibility" could be a valid purpose). And we are told that our fair use analysis must prioritize certain factors over others, *post*, at 50, n. 5, even though our case law instructs that fair use depends on the context, see *Campbell*, 510 U. S., at 577–578.

We do not understand Congress, however, to have shielded computer programs from the ordinary application of copyright's limiting doctrines in this way. By defining computer programs in § 101, Congress chose to place this subject matter within the copyright regime. Like other protected works, that means that the owners of computer programs enjoy the exclusive rights set forth in the Act, including the right to "reproduce [a] copyrighted work" or to "prepare derivative works." 17 U. S. C. § 106. But that also means that exclusive rights in computer programs are limited like any other works. Just as fair use distinguishes among books and films, which are indisputably subjects of copyright, so too must it draw lines among computer programs. And just as fair use takes account of the market in which scripts and paintings are bought and sold, so too must it consider the realities of how technological works are created and disseminated. We do not believe that an approach close to "all or nothing" would be faithful to the Copyright Act's overall design.

V

At the outset, Google argues that "fair use" is a question for a jury to decide; here the jury decided the question in Google's favor; and we should limit our review to determining whether "substantial evidence" justified the jury's decision. The Federal Circuit disagreed. It thought that the "fair use" question was a mixed question of fact and law; that reviewing courts should appropriately defer to the jury's findings of underlying facts; but that the ultimate question whether those facts showed a "fair use" is a legal question for judges to decide *de novo*.

We agree with the Federal Circuit's answer to this question. We have said, "[f]air use is a mixed question of law and fact." *Harper & Row*, 471 U. S., at 560. We have explained that a reviewing court should try to break such a question into its separate factual and legal parts, reviewing each according to the appropriate legal standard. But when a question can be reduced no further, we have added that "the standard of review for a mixed question all depends—on whether answering it entails primarily legal or factual work." *U. S. Bank N. A.* v. *Village at Lakeridge, LLC*, 583 U. S. 387, 396 (2018).

In this case, the ultimate "fair use" question primarily involves legal work. "Fair use" was originally a concept fashioned by judges. *Folsom*, 9 F. Cas., at 348. Our cases still provide legal interpretations of the fair use provision. And those interpretations provide general guidance for future cases. See, *e. g.*, *Campbell*, 510 U. S., at 592–593 (describing kinds of market harms that are not the concern of copyright); *Harper & Row*, 471 U. S., at 564 ("scope of fair use is narrower with respect to unpublished works"); *Sony*, 464 U. S., at 451 (wholesale copying aimed at creating a market substitute is presumptively unfair). This type of work is legal work. *U. S. Bank*, 583 U. S., at 396 ("[W]hen applying the law involves developing auxiliary legal principles of use in other cases[,] appellate courts should typically review a decision *de novo*").

Applying a legal "fair use" conclusion may, of course, involve determination of subsidiary factual questions, such as "whether there was harm to the actual or potential markets for the copyrighted work" or "how much of the copyrighted work was copied." 886 F. 3d, at 1196; see, *e. g.*, *Peter F. Gaito Architecture, LLC* v. *Simone Development Corp.*, 602 F. 3d 57, 63 (CA2 2010) (noting that in an infringement suit "the question of substantial similarity typically presents an extremely close question of fact"). In this case the Federal

Circuit carefully applied the fact/law principles we set forth in *U. S. Bank*, leaving factual determinations to the jury and reviewing the ultimate question, a legal question, *de novo*.

Next, Google argues that the Federal Circuit's approach violates the Seventh Amendment. The Amendment both requires that "the right of trial by jury . . . be preserved" and forbids courts to "re-examin[e]" any "fact tried by a jury." U. S. Const., Amdt. 7; see also *Gasperini* v. *Center for Humanities, Inc.*, 518 U. S. 415, 432–433 (1996). The Reexamination Clause is no bar here, however, for, as we have said, the ultimate question here is one of law, not fact. It does not violate the Reexamination Clause for a court to determine the controlling law in resolving a challenge to a jury verdict, as happens any time a court resolves a motion for judgment as a matter of law. See, *e. g.*, *Neely* v. *Martin K. Eby Constr. Co.*, 386 U. S. 317, 322 (1967).

Nor is Google correct that "the right of trial by jury" includes the right to have a jury resolve a fair use defense. That Clause is concerned with "the particular trial decision" at issue. *Markman* v. *Westview Instruments, Inc.*, 517 U. S. 370, 376 (1996). Even though it is possible to find pre-Revolutionary English cases in which a judge sent related questions like fair abridgment to a jury, those questions were significantly different from the "fair use" doctrine as courts apply it today. See, *e. g.*, *Gyles* v. *Wilcox*, 2 Atk. 141, 142–144, 26 Eng. Rep. 489, 490–491 (Ch. 1740) (asking the Court to resolve the narrow question whether a shortened work could be considered a new work); *Sayre* v. *Moore*, 1 East 361, n., 102 Eng. Rep. 138, 139, n. (K. B. 1785) (discussing the jury's role in resolving whether copying constituted infringement). As far as contemporary fair use is concerned, we have described the doctrine as an "equitable," not a "legal," doctrine. We have found no case suggesting that application of *U. S. Bank* here would fail "to preserve the substance of the common-law [jury trial] right as it existed in 1791." *Markman*, 517 U. S., at 376.

VI

We turn now to the basic legal question before us: Was Google's copying of the Sun Java API, specifically its use of the declaring code and organizational structure for 37 packages of that API, a "fair use." In answering this question, we shall consider the four factors set forth in the fair use statute as we find them applicable to the kind of computer programs before us. We have reproduced those four statutory factors *supra*, at 18–19. For expository purposes, we begin with the second.

A. "The Nature of the Copyrighted Work"

The Sun Java API is a "user interface." It provides a way through which users (here the programmers) can "manipulate and control" task-performing computer programs "via a series of menu commands." *Lotus Development Corp.*, 49 F. 3d, at 809. The API reflects Sun's division of possible tasks that a computer might perform into a set of actual tasks that certain kinds of computers actually will perform. Sun decided, for example, that its API would call up a task that compares one integer with another to see which is the larger. Sun's API (to our knowledge) will not call up the task of determining which great Arabic scholar decided to use Arabic numerals (rather than Roman numerals) to perform that "larger integer" task. No one claims that the decisions about what counts as a task are themselves copyrightable—although one might argue about decisions as to how to label and organize such tasks (*e. g.*, the decision to name a certain task "max" or to place it in a class called "Math." Cf. *Baker* v. *Selden*, 101 U. S. 99 (1880)).

As discussed above, *supra*, at 9–11, and in Appendix B, *infra*, we can think of the technology as having three essential parts. First, the API includes "implementing code," which actually instructs the computer on the steps to follow to carry out each task. Google wrote its own programs (implementing programs) that would perform each one of the tasks that its API calls up.

Second, the Sun Java API associates a particular command, called a "method call," with the calling up of each task. The symbols **java.lang.**, for example, are part of the command that will call up the program (whether written by Sun or, as here, by Google) that instructs the computer to carry out the "larger number" operation. Oracle does not here argue that the use of these commands by programmers itself violates its copyrights.

Third, the Sun Java API contains computer code that will associate the writing of a method call with particular "places" in the computer that contain the needed implementing code. This is the declaring code. The declaring code both labels the particular tasks in the API and organizes those tasks, or "methods," into "packages" and "classes." We have referred to this organization, by way of rough analogy, as file cabinets, drawers, and files. Oracle does claim that Google's use of the Sun Java API's declaring code violates its copyrights.

The declaring code at issue here resembles other copyrighted works in that it is part of a computer program. Congress has specified that computer programs are subjects of copyright. It differs, however, from many other kinds of copyrightable computer code. It is inextricably bound together with a general system, the division of computing tasks, that no one claims is a proper subject of copyright. It is inextricably bound up with the idea of organizing tasks into what we have called cabinets, drawers, and files, an idea that is also not copyrightable. It is inextricably bound up with the use of specific commands known to programmers, known here as method calls (such as **java.lang.Math.max**, etc.), that Oracle does not here contest. And it is inextricably bound up with implementing code, which is copyrightable but was not copied.

Moreover, the copied declaring code and the uncopied implementing programs call for, and reflect, different kinds of capabilities. A single implementation may walk a computer through dozens of different steps. To write implementing programs, witnesses told the jury, requires balancing such considerations as how quickly a computer can execute a task or the likely size of the computer's memory. One witness described that creativity as "magic" practiced by an API developer when he or she worries "about things like power management" for devices that "run on a battery." App. 143; see also *id.*, at 147, 204. This is the very creativity that was needed to develop the Android software for use not in laptops or desktops but in the very different context of smartphones.

The declaring code (inseparable from the programmer's method calls) embodies a different kind of creativity. Sun Java's creators, for example, tried to find declaring code names that would prove intuitively easy to remember. *Id.*, at 211. They wanted to attract programmers who would learn the system, help to develop it further, and prove reluctant to use another. See *post*, at 51 ("Declaring code . . . is user facing. It must be designed and organized in a way that is intuitive and understandable to developers so that they can invoke it"). Sun's business strategy originally emphasized the importance of using the API to attract programmers. It sought to make the API "open" and "then . . . compete on implementations." App. 124–125. The testimony at trial was replete with examples of witnesses drawing this critical line between the user-centered declaratory code and the innovative implementing code. *Id.*, at 126–127, 159–160, 163–164, 187, 190–191.

These features mean that, as part of a user interface, the declaring code differs to some degree from the mine run of computer programs. Like other computer programs, it is functional in nature. But unlike many other programs, its use is inherently bound together with uncopyrightable ideas (general task division and organization) and new creative expression (Android's implementing code). Unlike many other programs, its value in significant part derives from the value that those who do not hold copyrights, namely, computer programmers, invest of their own time and effort to learn the API's system. And unlike many other programs, its value lies in its efforts to encourage programmers to learn and to use that system so that they will use (and continue to use) Sun-related implementing programs that Google did not copy.

Although copyrights protect many different kinds of writing, Leval 1116, we have emphasized the need to "recogni[ze] that some works are closer to the core of [copyright] than others," *Campbell*, 510 U. S., at 586. In our view, for the reasons just described, the declaring code is, if copyrightable at all, further than are most computer programs (such as the implementing code) from the core of copyright. That fact diminishes the fear, expressed by both the dissent and the Federal Circuit, that application of "fair use" here would seriously undermine the general copyright protection that Congress provided for computer programs. And it means that this factor, "the nature of the copyrighted work," points in the direction of fair use.

B. "The Purpose and Character of the Use"

In the context of fair use, we have considered whether the copier's use "adds something new, with a further purpose or different character, altering" the copyrighted work "with new expression, meaning, or message." *Id.*, at 579. Commentators have put the matter more broadly, asking whether the copier's use "fulfill[s] the objective of copyright law to stimulate creativity for public illumination." Leval 1111. In answering this question, we have used the word "transformative" to describe a copying use that adds something new and important. *Campbell*, 510 U. S., at 579. An " 'artistic painting' " might, for example, fall within the scope of fair use even though it precisely replicates a copyrighted " 'advertising logo to make a comment about consumerism.' " 4 Nimmer on Copyright § 13.05[A][1][b] (quoting Netanel, Making Sense of Fair Use, 15 Lewis & Clark L. Rev. 715, 746 (2011)). Or, as we held in *Campbell*, a parody can be transformative because it comments on the original or criticizes it, for "[p]arody needs to mimic an original to make its point." 510 U. S., at 580–581.

Google copied portions of the Sun Java API precisely, and it did so in part for the same reason that Sun created those portions, namely, to enable programmers to call up implementing programs that would accomplish particular tasks. But since virtually any unauthorized use of a copyrighted computer program (say, for teaching or research) would do the same, to stop here would severely limit the scope of fair use in the functional context of computer programs. Rather, in determining whether a use is "transformative," we must go further and examine the copying's more specifically described "purpose[s]" and "character." 17 U. S. C. §107(1).

Here Google's use of the Sun Java API seeks to create new products. It seeks to expand the use and usefulness of Android-based smartphones. Its new product offers programmers a highly creative and innovative tool for a smartphone environment. To the extent that Google used parts of the Sun Java API to create a new platform that could be readily used by programmers, its use was consistent with that creative "progress" that is the basic constitutional objective of copyright itself. Cf. *Feist*, 499 U. S., at 349–350 ("The primary objective of copyright is not to reward the labor of authors, but '[t]o promote the Progress of Science and useful Arts'" (quoting U. S. Const., Art. I, §8, cl. 8)).

The jury heard that Google limited its use of the Sun Java API to tasks and specific programming demands related to Android. It copied the API (which Sun created for use in desktop and laptop computers) only insofar as needed to include tasks that would be useful in smartphone programs. App. 169–170. And it did so only insofar as needed to allow programmers to call upon those tasks without discarding a portion of a familiar programming language and learning a new one. *Id.*, at 139–140. To repeat, Google, through Android, provided a new collection of tasks operating in a distinct and different computing environment. Those tasks were carried out through the use of new implementing code (that Google wrote) designed to operate within that new environment. Some of the *amici* refer to what Google did as "reimplementation," defined as the "building of a system . . . that repurposes the same words and syntaxes" of an existing system—in this case so that programmers who had learned an existing system could put their basic skills to use in a new one. Brief for R Street Institute et al. as *Amici Curiae* 2.

The record here demonstrates the numerous ways in which reimplementing an interface can further the development of computer programs. The jury heard that shared interfaces are necessary for different programs to speak to each other. App. 125 ("We have to agree on the APIs so that the application I write to show a movie runs on your device"). It heard that the reimplementation of interfaces is necessary if programmers are to be able to use their acquired skills. *Id.*, at 191 ("If the API labels change, then either the software wouldn't continue to work anymore or the developer . . . would have to learn a whole new language to be able to use these API labels"). It heard that the reuse of APIs is common in the industry. *Id.*, at 115, 155, 663. It heard that Sun itself had used pre-existing interfaces in creating Java. *Id.*, at 664. And it heard that Sun executives thought that widespread use of the Java programming language, including use on a smartphone platform, would benefit the company. *Id.*, at 130–133.

Amici supporting Google have summarized these same points—points that witnesses explained to the jury. See, *e. g.*, Brief for Copyright Scholars as *Amici Curiae* 25 ("[T]he portions of Java SE that Google reimplemented may have helped preserve consistency of use within the larger Java developer community"); Brief for Microsoft Corporation as *Amicus Curiae* 22 ("[A]llowing reasonable fair use of functional code enables innovation that creates new opportunities for the whole market to grow"); Brief for 83 Computer Scientists as *Amici Curiae* 20 ("Reimplementing interfaces fueled widespread adoption of popular programming languages" (emphasis deleted)); Brief for R Street Institute et al. as *Amici Curiae* 15–20 (describing Oracle's reimplementation of other APIs); see also Brief for American Antitrust Institute as *Amicus Curiae* 7 ("Copyright on largely functional elements of software that [have] become an industry standard gives a copyright holder anticompetitive power").

These and related facts convince us that the "purpose and character" of Google's copying was transformative—to the point where this factor too weighs in favor of fair use.

There are two other considerations that are often taken up under the first factor: commerciality and good faith. The text of § 107 includes various noncommercial uses, such as teaching and scholarship, as paradigmatic examples of privileged copying. There is no doubt that a finding that copying was not commercial in nature tips the scales in favor of fair use. But the inverse is not necessarily true, as many common fair uses are indisputably commercial. For instance, the text of § 107 includes examples like "news reporting," which is often done for commercial profit. So even though Google's use was a commercial endeavor—a fact no party disputed, see 886 F. 3d, at 1197—that is not dispositive of the first factor, particularly in light of the inherently transformative role that the reimplementation played in the new Android system.

As for bad faith, our decision in *Campbell* expressed some skepticism about whether bad faith has any role in a fair use analysis. 510 U. S., at 585, n. 18. We find this skepticism justifiable, as "[c]opyright is not a privilege reserved for the well-behaved." Leval 1126. We have no occasion here to say whether good faith is as a general matter a helpful inquiry. We simply note that given the strength of the other factors pointing toward fair use and the jury finding in Google's favor on hotly contested evidence, that factbound consideration is not determinative in this context.

C. "The Amount and Substantiality of the Portion Used"

If one considers the declaring code in isolation, the quantitative amount of what Google copied was large. Google copied the declaring code for 37 packages of the Sun Java API, totaling approximately 11,500 lines of code. Those lines of code amount to virtually all the declaring code needed to call up hundreds of different tasks. On the other hand, if one considers the entire set of software material in the Sun Java API, the quantitative amount copied was small. The total set of Sun Java API computer code, including implementing code, amounted to 2.86 million lines, of which the copied 11,500 lines were only 0.4 percent. App. 212.

The question here is whether those 11,500 lines of code should be viewed in isolation or as one part of the considerably greater whole. We have said that even a small amount of copying may fall outside of the scope of fair use where the excerpt copied consists of the " 'heart' " of the original work's creative expression. *Harper & Row*, 471 U. S., at 564–565. On the other hand, copying a larger amount of material can fall within the scope of fair use where the material copied captures little of the material's creative expression or is central to a copier's valid purpose. See, *e. g.*, *Campbell*, 510 U. S., at 588; *New Era Publications Int'l, ApS* v. *Carol Publishing Group*, 904 F. 2d 152, 158 (CA2 1990). If a defendant had copied one sentence in a novel, that copying may well be insubstantial. But if that single sentence set forth one of the world's shortest short stories—"When he awoke, the dinosaur was still there."—the question looks much different, as the copied material constitutes a small part of the novel but the entire short story. See A. Monterroso, El Dinosaurio, in Complete Works & Other Stories 42 (E. Grossman transl. 1995). (In the original Spanish, the story reads: "Cuando despertó, el dinosaurio todavía estaba allí.")

Several features of Google's copying suggest that the better way to look at the numbers is to take into account the several million lines that Google did not copy. For one thing, the Sun Java API is inseparably bound to those task-implementing lines. Its purpose is to call them up. For another, Google copied those lines not because of their creativity, their beauty, or even (in a sense) because of their purpose. It copied them because programmers had already learned to work with the Sun Java API's system, and it would have been difficult, perhaps prohibitively so, to attract programmers to build its Android smartphone system without them. Further, Google's basic purpose was to create a different task-related system for a different computing environment (smartphones) and to create a platform—the Android platform—that would help achieve and popularize that objective. The "substantiality" factor will generally weigh in favor of fair use where, as here, the amount of copying was tethered to a valid, and transformative, purpose. *Supra*, at 30–31; see *Campbell*, 510 U. S., at 586–587 (explaining that the factor three "enquiry will harken back to the first of the statutory factors, for . . . the extent of permissible copying varies with the purpose and character of the use").

We do not agree with the Federal Circuit's conclusion that Google could have achieved its Java-compatibility objective by copying only the 170 lines of code that are "necessary to write in the Java language." 886 F. 3d, at 1206. In our view, that conclusion views Google's legitimate objectives too narrowly. Google's basic objective was not simply to make the Java programming language usable on its Android systems. It was to permit programmers to make use of their knowledge and experience using the Sun Java API when they wrote new programs for smartphones with the Android platform. In principle, Google might have created its own, different system of declaring code. But the jury could have found that its doing so would not have achieved that basic objective. In a sense, the declaring code was the key that it needed to unlock the programmers' creative energies. And it needed those energies to create and to improve its own innovative Android systems.

We consequently believe that this "substantiality" factor weighs in favor of fair use.

D. Market Effects

The fourth statutory factor focuses upon the "effect" of the copying in the "market for or value of the copyrighted work." 17 U. S. C. § 107(4). Consideration of this factor, at least where computer programs are at issue, can prove more complex than at first it may seem. It can require a court to consider the amount of money that the copyright owner might lose. As we pointed out in *Campbell*, "verbatim copying of the original in its entirety for commercial purposes" may well produce a market substitute for an author's work. 510 U. S., at 591. Making a film of an author's book may similarly mean potential or presumed losses to the copyright owner. Those losses normally conflict with copyright's basic objective: providing authors with exclusive rights that will spur creative expression.

But a potential loss of revenue is not the whole story. We here must consider not just the amount but also the source of the loss. As we pointed out in *Campbell*, a "lethal parody, like a scathing theatre review," may "kil[l] demand for the original." *Id.*, at 591–592. Yet this kind of harm, even if directly translated into foregone dollars, is not "cognizable under the Copyright Act." *Id.*, at 592.

Further, we must take into account the public benefits the copying will likely produce. Are those benefits, for example, related to copyright's concern for the creative production of new expression? Are they comparatively important, or unimportant, when compared with dollar amounts likely lost (taking into account as well the nature of the source of the loss)? Cf. *MCA, INC.* v. *Wilson*, 677 F. 2d 180, 183 (CA2 1981) (calling for a balancing of public benefits and losses to copyright owner under this factor).

We do not say that these questions are always relevant to the application of fair use, not even in the world of computer programs. Nor do we say that these questions are the only questions a court might ask. But we do find them relevant here in helping to determine the likely market effects of Google's reimplementation.

As to the likely amount of loss, the jury could have found that Android did not harm the actual or potential markets for Java SE. And it could have found that Sun itself (now Oracle) would not have been able to enter those markets successfully whether Google did, or did not, copy a part of its API. First, evidence at trial demonstrated that, regardless of Android's smartphone technology, Sun was poorly positioned to succeed in the mobile phone market. The jury heard ample evidence that Java SE's primary market was laptops and desktops. App. 99, 200. It also heard that Sun's many efforts to move into the mobile phone market had proved unsuccessful. *Id.*, at 135, 235, 671. As far back as 2006, prior to Android's release, Sun's executives projected declining revenue for mobile phones because of emerging smartphone technology. *Id.*, at 240. When Sun's former CEO was asked directly whether Sun's failure to build a smartphone was attributable to Google's development of Android, he answered that it was not. *Id.*, at 650. Given the evidence showing that Sun was beset by business challenges in developing a mobile phone product, the jury was entitled to agree with that assessment.

Second, the jury was repeatedly told that devices using Google's Android platform were different in kind from those that licensed Sun's technology. For instance, witnesses explained that the broader industry distinguished between smartphones and simpler "feature phones." *Id.*, at 237. As to the specific devices that used Sun-created software, the jury heard that one of these phones lacked a touchscreen, *id.*, at 359–360, while another did not have a QWERTY keyboard, *id.*, at 672. For other mobile devices, the evidence showed that simpler products, like the Kindle, used Java software, *id.*, at 396, while more advanced technology, like the Kindle Fire, were built on the Android operating system, *id.*, at 206. This record evidence demonstrates that, rather than just "repurposing [Sun's] code from larger computers to smaller computers," *post*, at 57, Google's Android platform was part of a distinct (and more advanced) market than Java software.

Looking to these important differences, Google's economic expert told the jury that Android was not a market substitute for Java's software. As he explained, "the two products are on very different devices," and the Android platform, which offers "an entire mobile operating stack," is a "very different typ[e] of produc[t]" than Java SE, which is "just an applications programming framework." App. 256; see also *id.*, at 172–174. Taken together, the evidence showed that Sun's mobile phone business was declining, while the market increasingly demanded a new form of smartphone technology that Sun was never able to offer.

Finally, the jury also heard evidence that Sun foresaw a benefit from the broader use of the Java programming language in a new platform like Android, as it would further expand the network of Java-trained programmers. *Id.*, at 131–133; see also *id.*, at 153 ("Once an API starts getting reimplemented, you know it has succeeded"). In other words, the jury could have understood Android and Java SE as operating in two distinct markets. And because there are two markets at issue, programmers learning the Java language to work in one market (smartphones) are then able to bring those talents to the other market (laptops). See 4 Nimmer on Copyright § 13.05[A][4] (explaining that factor four asks what the impact of "widespread conduct of the sort engaged in by the defendant" would be on the market for the present work).

Oracle presented evidence to the contrary. Indeed, the Federal Circuit held that the "market effects" factor militated against fair use in part because Sun had tried to enter the Android market. 886 F. 3d, at 1209 (Sun sought licensing agreement with Google). But those licensing negotiations concerned much more than 37 packages of declaring code, covering topics like "the implementation of [Java's] code" and "branding and cooperation" between the firms. App. 245; see also 4 Nimmer on Copyright § 13.05[A][4] (cautioning against the "danger of circularity . . . posed" by considering unrealized licensing opportunities because "it is a given in every fair use case that plaintiff suffers a loss of a *potential* market if that potential is defined as the theoretical market for licensing the very use at bar"). In any event, the jury's fair use determination means that neither Sun's effort to obtain a license nor Oracle's conflicting evidence can overcome evidence indicating that, at a minimum, it would have been difficult for Sun to enter the smartphone market, even had Google not used portions of the Sun Java API.

On the other hand, Google's copying helped Google make a vast amount of money from its Android platform. And enforcement of the Sun Java API copyright might give Oracle a significant share of these funds. It is important, however, to consider why and how Oracle might have become entitled to this money. When a new interface, like an API or a spreadsheet program, first comes on the market, it may attract new users because of its expressive qualities, such as a better visual screen or because of its superior functionality. As time passes, however, it may be valuable for a different reason, namely, because users, including programmers, are just used to it. They have already learned how to work with it. See *Lotus Development Corp.*, 49 F. 3d, at 821 (Boudin, J., concurring).

The record here is filled with evidence that this factor accounts for Google's desire to use the Sun Java API. See, *e. g.*, App. 169–170, 213–214. This source of Android's profitability has much to do with third parties' (say, programmers') investment in Sun Java programs. It has correspondingly less to do with Sun's investment in creating the Sun Java API. We have no reason to believe that the Copyright Act seeks to protect third parties' investment in learning how to operate a created work. Cf. *Campbell*, 510 U. S., at 591–592 (discussing the need to identify those harms that are "cognizable under the Copyright Act").

Finally, given programmers' investment in learning the Sun Java API, to allow enforcement of Oracle's copyright here would risk harm to the public. Given the costs and difficulties of producing alternative APIs with similar appeal to programmers, allowing enforcement here would make of the Sun Java API's declaring code a lock limiting the future creativity of new programs. Oracle alone would hold the key. The result could well prove highly profitable to Oracle (or other firms holding a copyright in computer interfaces). But those profits could well flow from creative improvements, new applications, and new uses developed by users who have learned to work with that interface. To that extent, the lock would interfere with, not further, copyright's basic creativity objectives. See *Connectix Corp.*, 203 F. 3d, at 607; see also *Sega Enterprises*, 977 F. 2d, at 1523–1524 ("[A]n attempt to monopolize the market by making it impossible for others to compete runs counter to the statutory purpose of promoting creative expression"); *Lexmark Int'l*, 387 F. 3d, at 544 (noting that where a subsequent user copied a computer program to foster functionality, it was not exploiting the program's "commercial value *as a copyrighted work*" (emphasis in original)). After all, "copyright supplies the economic incentive to [both] create and disseminate ideas," *Harper & Row*, 471 U. S., at 558, and the reimplementation of a user interface allows creative new computer code to more easily enter the market.

The uncertain nature of Sun's ability to compete in Android's market place, the sources of its lost revenue, and the risk of creativity-related harms to the public, when taken together, convince that this fourth factor—market effects—also weighs in favor of fair use.

* * *

The fact that computer programs are primarily functional makes it difficult to apply traditional copyright concepts in that technological world. See *Lotus Development Corp.*, 49 F. 3d, at 820 (Boudin, J., concurring). In doing so here, we have not changed the nature of those concepts. We do not overturn or modify our earlier cases involving fair use—cases, for example, that involve "knockoff" products, journalistic writings, and parodies. Rather, we here recognize that application of a copyright doctrine such as fair use has long proved a cooperative effort of Legislatures and courts, and that Congress, in our view, intended that it so continue. As such, we have looked to the principles set forth in the fair use statute, § 107, and set forth in our earlier cases, and applied them to this different kind of copyrighted work.

We reach the conclusion that in this case, where Google reimplemented a user interface, taking only what was needed to allow users to put their accrued talents to work in a new and transformative program, Google's copying of the Sun Java API was a fair use of that material as a matter of law. The Federal Circuit's contrary judgment is reversed, and the case is remanded for further proceedings in conformity with this opinion.

It is so ordered.

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

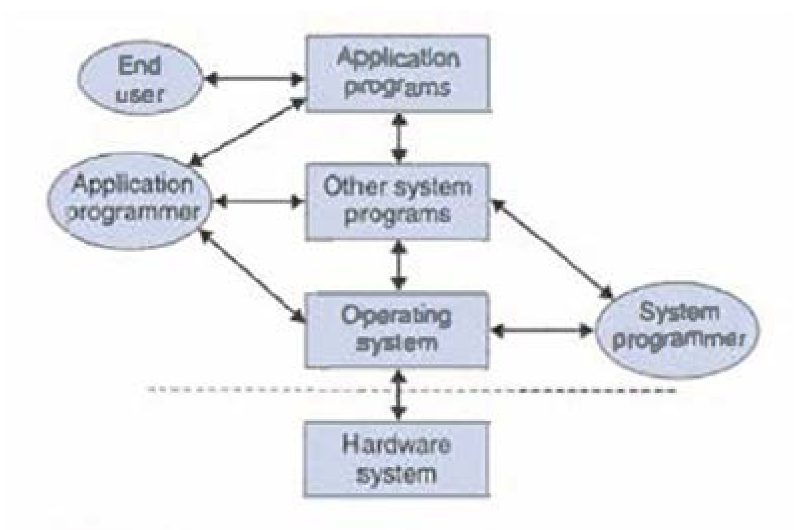
APPENDIXES

A

Computer System Diagram

Some readers might find it helpful to start with an explanation of what a "software platform" is. Put simply, a software platform collects all of the software tools that a programmer may need to build computer programs. The Android platform, for instance, includes an "operating system," "core libraries," and a "virtual machine," among other tools. App. 197–198.

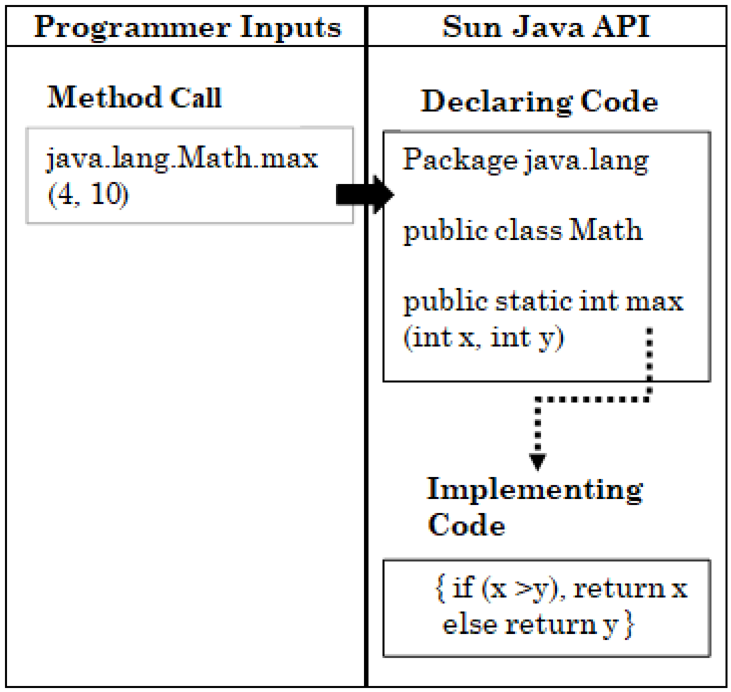
The diagram below illustrates the general features of a standard computer system, with the dotted line reflecting the division between a computer's hardware and its software. (It is not intended to reflect any specific technology at issue in this case.)



J. Garrido & R. Schlesinger, Principles of Modern Operating Systems 8 (2008) ("Figure 1.4. An External View of a Computer System").

B

Sun Java API Diagram



This image depicts the connection between the three parts of the Sun Java API technology at issue, using the District Court's example. *Oracle*, 872 F. Supp. 2d, at 980–981. The programmer enters a method call to invoke a task from within the API (the solid arrow). The precise symbols in the method call correspond to a single task, which is located within a particular class. That class is located within a particular package. All of the lines of code that provide that organization and name the methods, classes, and packages are "declaring code." For each method, the declaring code is associated with particular lines of implementing code (the dotted arrow). It is that implementing code (which Google wrote for its Android API) that actually instructs the computer in the programmer's application.

JUSTICE THOMAS, with whom JUSTICE ALITO joins, dissenting.

Oracle spent years developing a programming library that successfully attracted software developers, thus enhancing the value of Oracle's products.[1] Google sought a license to use the library in Android, the operating system it was developing for mobile phones. But when the companies could not agree on terms, Google simply copied verbatim 11,500 lines of code from the library. As a result, it erased 97.5% of the value of Oracle's partnership with Amazon, made tens of billions of dollars, and established its position as the owner of the largest mobile operating system in the world. Despite this, the majority holds that this copying was fair use.

The Court reaches this unlikely result in large part because it bypasses the antecedent question clearly before us: Is the software code at issue here protected by the Copyright Act? The majority purports to assume, without deciding, that the code is protected. But its fair-use analysis is wholly inconsistent with the substantial protection Congress gave to computer code. By skipping over the copyrightability question, the majority disregards half the relevant statutory text and distorts its fair-use analysis. Properly considering that statutory text, Oracle's code at issue here is copyrightable, and Google's use of that copyrighted code was anything but fair.

I

In the 1990s, Oracle created a programming language called Java. Like many programming languages, Java allows developers to prewrite small subprograms called "methods." Methods form the building blocks of more complex programs. This process is not unlike what legislatures do with statutes. To save space and time, legislatures define terms and then use those definitions as a shorthand. For example, the legal definition for "refugee" is more than

[1] A different company, Sun, created the library. But because Oracle later purchased Sun, for simplicity I refer to both companies as Oracle.

300 words long. 8 U. S. C. § 1101(42). Rather than repeat all those words every time they are relevant, the U. S. Code encapsulates them all with a single term that it then inserts into each relevant section. Java methods work similarly. Once a method has been defined, a developer need only type a few characters (the method name and relevant inputs) to invoke everything contained in the subprogram. A programmer familiar with prewritten methods can string many of them together to quickly develop complicated programs without having to write from scratch all the basic subprograms.

To create Java methods, developers use two kinds of code. The first, "declaring code," names the method, defines what information it can process, and defines what kind of data it can output. It is like the defined term in a statute. The second, "implementing code," includes the step-by-step instructions that make those methods run.[2] It is like the detailed definition in a statute.

Oracle's declaring code was central to its business model. Oracle profited financially by encouraging developers to create programs written in Java and then charging manufacturers a fee to embed in their devices the Java software platform needed to run those programs. To this end, Oracle created a work called Java 2 Platform, Standard Edition, which included a highly organized library containing about 30,000 methods. Oracle gave developers free access to these

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[2] Consider what the relevant text of a simple method—designed to return the largest of three integers—might look like:

```
public static int MaxNum (int x, int y, int z) {
  if (x >= y && x >= z) return x;
  else if (y >= x && y >= z) return y;
  else return z;
  }
```

The first line is declaring code that defines the method, including what inputs (integers x, y, and z) it can process and what it can output (an integer). The remainder is implementing code that checks which of the inputs is largest and returns the result. Once this code is written, a programmer could invoke it by typing, for example, "MaxNum (4, 12, 9)."

methods to encourage them to write programs for the Java platform. In return, developers were required to make their programs compatible with the Java platform on any device. Developers were encouraged to make improvements to the platform, but they were required to release beneficial modifications to the public. If a company wanted to customize the platform and keep those customizations secret for business purposes, it had to pay for a separate license.

By 2005, many companies were racing to develop operating systems for what would become modern smartphones. Oracle's strategy had successfully encouraged millions of programmers to learn Java. As a result, Java software platforms were in the vast majority of mobile phones. Google wanted to attract those programmers to Android by including in Android the declaring code with which they were now familiar. But the founder of Android, Andrew Rubin, understood that the declaring code was copyrighted, so Google sought a custom license from Oracle. At least four times between 2005 and 2006, the two companies attempted to negotiate a license, but they were unsuccessful, in part because of "trust issues." App. 657.

When those negotiations broke down, Google simply decided to use Oracle's code anyway. Instead of creating its own declaring code—as Apple and Microsoft chose to do—Google copied verbatim 11,500 lines of Oracle's declaring code and arranged that code exactly as Oracle had done. It then advertised Android to device manufacturers as containing "Core Java Libraries." *Id.*, at 600. Oracle predictably responded by suing Google for copyright infringement. The Federal Circuit ruled that Oracle's declaring code is copyrightable and that Google's copying of it was not fair use.

II

The Court wrongly sidesteps the principal question that we were asked to answer: Is declaring code protected by copyright? I would hold that it is.

Computer code occupies a unique space in intellectual property. Copyright law generally protects works of authorship. Patent law generally protects inventions or discoveries. A library of code straddles these two categories. It is highly functional like an invention; yet as a writing, it is also a work of authorship. Faced with something that could fit in either space, Congress chose copyright, and it included declaring code in that protection.

The Copyright Act expressly protects computer code. It recognizes that a "computer program" is protected by copyright. See 17 U. S. C. §§ 109(b), 117, 506(a). And it defines " 'computer program' " as "a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result." § 101. That definition clearly covers declaring code—sets of statements that indirectly perform computer functions by triggering prewritten implementing code.

Even without that express language, declaring code would satisfy the general test for copyrightability. "Copyright protection subsists . . . in original works of authorship fixed in any tangible medium of expression." § 102(a). "Works of authorship include . . . literary works," which are "works . . . expressed in words, numbers, or other verbal or numerical symbols." §§ 101, 102(a). And a work is "original" if it is "independently created by the author" and "possesses at least some minimal degree of creativity." *Feist Publications, Inc.* v. *Rural Telephone Service Co.*, 499 U. S. 340, 345 (1991). The lines of declaring code in the Java platform readily satisfy this "extremely low" threshold. *Ibid.* First, they are expressed in "words, numbers, or other verbal or numerical symbols" and are thus works of authorship. § 101. Second, as Google concedes, the lines of declaring code are original because Oracle could have created them any number of ways.

Google contends that declaring code is a "method of operation" and thus excluded from protection by § 102(b). That subsection excludes from copyright protection "any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied." This provision codifies the "idea/expression dichotomy" that copyright protection covers only "the author's expression" of an idea, not the idea itself. *Golan* v. *Holder*, 565 U. S. 302, 328 (2012). A property right in the idea itself "can only be secured, if it can be secured at all, by letters-patent." *Baker* v. *Selden*, 101 U. S. 99, 105 (1880). Thus, for example, a "method of book-keeping" is not protected by copyright, but the expression describing that accounting method is. *Id.*, at 101–102. So too, a person who writes a book inventing the idea of declaring code has a copyright protection in the expression in the book, but not in the idea of declaring code itself. Google acknowledges that implementing code is protected by the Copyright Act, but it contends that declaring code is much more functional and thus is a "method of operation" outside the scope of protection.

That argument fails. As the majority correctly recognizes, declaring code and implementing code are "inextricably bound" together. *Ante*, at 27. Declaring code defines the scope of a set of implementing code and gives a programmer a way to use it by shortcut. Because declaring code incorporates implementing code, it has no function on its own. Implementing code is similar. Absent declaring code, developers would have to write every program from scratch, making complex programs prohibitively time consuming to create. The functionality of both declaring code and implementing code will thus typically rise and fall together.

Google's argument also cannot account for Congress' decision to define protected computer code as "a set of statements or instructions to be used *directly or indirectly* in a computer in order to bring about a certain result." § 101 (emphasis added). Hence, Congress rejected any categorical distinction between declaring and implementing code. Implementing code orders a computer operation directly. Declaring code does so indirectly by incorporating implementing code. When faced with general language barring protection for "methods of operation" and specific language protecting declaring code, the "'specific governs the general.'" *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U. S. 639, 645 (2012).

This context makes clear that the phrase "method of operation" in § 102(b) does not remove protection from declaring code simply because it is functional. That interpretation does not, however, render "method of operation" meaningless. It is "given more precise content by the neighboring words with which it is associated." *United States* v. *Williams*, 553 U. S. 285, 294 (2008). Other terms in the same subsection such as "idea," "principle," and "concept" suggest that "method of operation" covers the functions and ideas implemented by computer code—such as math functions, accounting methods, or the idea of declaring code—not the specific expression Oracle created. Oracle cannot copyright the idea of using declaring code, but it can copyright the specific expression of that idea found in its library.

Google also contends that declaring code is not copyrightable because the "merger doctrine" bars copyright protection when there is only one way to express an idea. That argument fails for the same reasons Google's § 102(b) argument fails. Even if the doctrine exists, Google admits that it is merely an application of § 102(b). And, in any event, there may have been only one way for Google to copy the lines of declaring code, but there were innumerable ways for Oracle to write them. Certainly, Apple and Microsoft managed to create their own declaring code.

III

The Court inexplicably declines to address copyrightability. Its sole stated reason is that "technological, economic, and business-related circumstances" are "rapidly changing." *Ante*, at 20. That, of course, has been a constant where computers are concerned.

Rather than address this principal question, the Court simply assumes that declaring code is protected and then concludes that every fair-use factor favors Google. I agree with the majority that Congress did not "shiel[d] computer programs from the ordinary application" of fair use. *Ante*, at 23. But the majority's application of fair use is far from ordinary. By skipping copyrightability, the majority gets the methodology backward, causing the Court to sidestep a key conclusion that ineluctably affects the fair-use analysis: Congress rejected categorical distinctions between declaring and implementing code. But the majority creates just such a distinction. The result of this distorting analysis is an opinion that makes it difficult to imagine any circumstance in which declaring code will remain protected by copyright.

I agree with the majority that, under our precedent, fair use is a mixed question of fact and law and that questions of law predominate.[3] Because the jury issued a finding of fair use in favor of Google, we must construe all factual disputes and inferences in Google's favor and ask whether the evidence was sufficient as a matter of law to support the jury's verdict. See Fed. Rule Civ. Proc. 50(b). But whether a statutory fair-use factor favors one side or the other is a

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[3] I would not, however, definitively resolve Google's argument that the Seventh Amendment commits the question of fair use to a jury. I tend to agree with the Court that fair use was not "itself necessarily a jury issue" when the Constitution was ratified. *Markman* v. *Westview Instruments, Inc.*, 517 U. S. 370, 376–377 (1996). Google cites cases about "fair abridgment," but Congress has since made clear that copyright holders have "exclusive rights" over any "abridgment." 17 U. S. C. §§ 101, 106. And in any event, judges often declined to refer these issues to juries. See, *e. g.*, *Gyles* v. *Wilcox*, 2 Atk. 141, 144, 26 Eng. Rep. 489, 490–491 (Ch. 1740); *Folsom* v. *Marsh*, 9 F. Cas. 342, 345–349 (No. 4,901) (CC Mass. 1841) (Story, J). Still, we should not so casually decide this question when the parties barely addressed it.

legal question reviewed *de novo*. Congress has established four statutory fair-use factors for courts to weigh.[4] Three decisively favor Oracle. And even assuming that the remaining factor favors Google, that factor, without more, cannot legally establish fair use in this context.

The majority holds otherwise—concluding that *every* factor favors Google—by relying, in large part, on a distinction it draws between declaring and implementing code, a distinction that the statute rejects. Tellingly, the majority evaluates the factors neither in sequential order nor in order of importance (at least two factors are more important under our precedent[5]). Instead, it starts with the second factor: the nature of the copyrighted work. It proceeds in this manner in order to create a distinction between declaring and implementing code that renders the former less worthy of protection than the latter. Because the majority's mistaken analysis rests so heavily on this factor, I begin with it as well.

A. The Nature of the Copyrighted Work

This factor requires courts to assess the level of creativity or functionality in the original work. It generally favors fair use when a copyrighted work is more "informational or functional" than "creative." 4 M. Nimmer & D. Nimmer,

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[4] The factors are: "(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work." §§ 107(1)–(4).

[5] The fourth factor—the effect of Google's copying on the potential market for Oracle's work—is "undoubtedly the single most important element of fair use." *Harper & Row, Publishers, Inc.* v. *Nation Enterprises*, 471 U. S. 539, 566 (1985). The first factor—the purpose and character of the use, including whether the use is commercial—is the second-most important because it can prove dispositive. See *id.*, at 550 ("[In general,] the fair use doctrine has always precluded a use that 'supersede[s] the use of the original' ").

Copyright § 13.05[A][2][a] (2019). Because code is predominantly functional, this factor will often favor copying when the original work is computer code. But because Congress determined that declaring and implementing code are copyrightable, this factor alone cannot support a finding of fair use.

The majority, however, uses this factor to create a distinction between declaring and implementing code that in effect removes copyright protection from declaring code. It concludes that, unlike implementing code, declaring code is far "from the core of copyright" because it becomes valuable only when third parties (computer programmers) value it and because it is "inherently bound together with uncopyrightable ideas." *Ante*, at 28–29.

Congress, however, rejected this sort of categorical distinction that would make declaring code less worthy of protection. The Copyright Act protects code that operates "in a computer in order to bring about a certain result" both "directly" (implementing code) and "indirectly" (declaring code). § 101. And if anything, declaring code is *closer* to the "core of copyright." *Ante*, at 29. Developers cannot even see implementing code. *Oracle Am., Inc.* v. *Google Inc.*, 2016 WL 3181206, *4 (ND Cal., June 8, 2016); see also *ante*, at 28 (declaring code is "user-centered"). Implementing code thus conveys *no* expression to developers. Declaring code, in contrast, is user facing. It must be designed and organized in a way that is intuitive and understandable to developers so that they can invoke it.

Even setting those concerns aside, the majority's distinction is untenable. True, declaring code is "inherently bound together with uncopyrightable ideas." *Ibid.* Is anything not? Books are inherently bound with uncopyrightable ideas—the use of chapters, having a plot, or including dialogue or footnotes. This does not place books far "from the core of copyright." And implementing code, which the majority concedes is copyrightable, is inherently bound up with "the division of computing tasks" that cannot be copyrighted.[6] *Ante*, at 27. We have not discounted a work of authorship simply because it is associated with non-copyrightable ideas. While ideas cannot be copyrighted, expressions of those ideas can. *Golan*, 565 U. S., at 328.

Similarly, it makes no difference that the value of declaring code depends on how much time third parties invest in learning it. Many other copyrighted works depend on the same. A Broadway musical script needs actors and singers to invest time learning and rehearsing it. But a theater cannot copy a script—the rights to which are held by a smaller theater—simply because it wants to entice actors to switch theaters and because copying the script is more efficient than requiring the actors to learn a new one.

What the majority says is true of declaring code is no less true of implementing code. Declaring code is how programmers access prewritten implementing code. The value of that implementing code thus is directly proportional to how much programmers value the associated declaring code. The majority correctly recognizes that declaring code "is inextricably bound up with implementing code," *ante*, at 27, but it overlooks the implications of its own conclusion.

Only after wrongly concluding that the nature of declaring code makes that code generally unworthy of protection does the Court move on to consider the other factors. This opening mistake taints the Court's entire analysis.

B. Market Effects

"[U]ndoubtedly the single most important element of fair use" is the effect of Google's copying " 'upon the potential

[6] The majority also belittles declaring code by suggesting it is simply a way to organize implementing code. *Ante*, at 27. Not so. Declaring code *defines* subprograms of implementing code, including by controlling what inputs they can process. Similarly, the majority is wrong to suggest that the purpose of declaring code is to connect pre-existing method calls to implementing code. *Ante*, at 10. Declaring code *creates* the method calls.

market for or value of [Oracle's] copyrighted work.'" *Harper & Row, Publishers, Inc.* v. *Nation Enterprises*, 471 U. S. 539, 566 (1985). As the Federal Circuit correctly determined, "evidence of actual and potential harm stemming from Google's copying was 'overwhelming.'" 886 F. 3d 1179, 1209 (2018). By copying Oracle's code to develop and release Android, Google ruined Oracle's potential market in at least two ways.

First, Google eliminated the reason manufacturers were willing to pay to install the Java platform. Google's business model differed from Oracle's. While Oracle earned revenue by charging device manufacturers to install the Java platform, Google obtained revenue primarily through ad sales. Its strategy was to release Android to device manufacturers for free and then use Android as a vehicle to collect data on consumers and deliver behavioral ads. With a free product available that included much of Oracle's code (and thus with similar programming potential), device manufacturers no longer saw much reason to pay to embed the Java platform.

For example, before Google released Android, Amazon paid for a license to embed the Java platform in Kindle devices. But after Google released Android, Amazon used the cost-free availability of Android to negotiate a 97.5% discount on its license fee with Oracle. Evidence at trial similarly showed that right after Google released Android, Samsung's contract with Oracle dropped from $40 million to about $1 million. Google contests none of this except to say that Amazon used a different Java platform, Java Micro Edition instead of Java Standard Edition. That difference is inconsequential because the former was simply a smaller subset of the latter. Google copied code found in both platforms. The majority does not dispute—or even mention—this enormous harm.

Second, Google interfered with opportunities for Oracle to license the Java platform to developers of smartphone operating systems. Before Google copied Oracle's code, nearly every mobile phone on the market contained the Java platform. Oracle's code was extraordinarily valuable to anybody who wanted to develop smartphones, which explains why Google tried no fewer than four times to license it. The majority's remark that Google also sought other licenses from Oracle, *ante*, at 38, does not change this central fact. Both parties agreed that Oracle could enter Google's current market by licensing its declaring code. But by copying the code and releasing Android, Google eliminated Oracle's opportunity to license its code for that use.

The majority writes off this harm by saying that the jury could have found that Oracle might not have been able to enter the modern smartphone market successfully.[7] *Ante*, at 36. But whether Oracle could itself enter that market is only half the picture. We look at not only the potential market "that creators of original works would in general develop" but also those potential markets the copyright holder might "license others to develop." *Campbell* v. *Acuff-Rose Music, Inc.*, 510 U. S. 569, 592 (1994). A book author need not be able to personally convert a book into a film so long as he can license someone else to do so. That Oracle could have licensed its code for use in Android is undisputed.

Unable to seriously dispute that Google's actions had a disastrous effect on Oracle's potential market, the majority changes course and asserts that enforcing copyright protection could harm the public by giving Oracle the power to "limi[t] the future creativity" of programs on Android. *Ante*, at 39. But this case concerns only versions of Android released through November 2014. Order in No. 3:10–cv–3561 (ND Cal., Feb. 5, 2016), Doc. 1479, p. 2 (identifying versions through Android Lollipop 5.0). Google has released

[7] It also suggests that Oracle may have received some incidental benefit from Android. *Ante*, at 37–38. But even assuming that is true, it would go to the question of damages, not fair use. And there is no evidence that any benefit came even close to offsetting Oracle's enormous loss.

six major versions since then. Only about 7.7% of active Android devices still run the versions at issue.[8] The majority's concern about a lock-in effect might carry more weight if this suit concerned versions of Android widely in use or that will be widely in use. It makes little sense in a suit about versions that are close to obsolete.

The majority's concern about a lock-in effect also is speculation belied by history. First, Oracle never had lock-in power. The majority (again) overlooks that Apple and Microsoft created mobile operating systems without using Oracle's declaring code. Second, Oracle always made its declaring code freely available to programmers. There is little reason to suspect Oracle might harm programmers by stopping now. And third, the majority simply assumes that the jury, in a future suit over current Android versions, would give Oracle control of Android instead of just awarding damages or perpetual royalties.

If the majority is going to speculate about what Oracle *might* do, it at least should consider what Google *has* done. The majority expresses concern that Oracle might abuse its copyright protection (on outdated Android versions) and "'attempt to monopolize the market.'" *Ante*, at 39. But it is Google that recently was fined a record $5 billion for abusing Android to violate antitrust laws. Case AT.40099, *Google Android*, July 18, 2018 (Eur. Comm'n-Competition); European Comm'n Press Release, Commission Fines Google €4.34 Billion for Illegal Practices Regarding Android Mobile Devices to Strengthen Dominance of Google's Search Engine, July 18, 2018. Google controls the most widely used mobile operating system in the world. And if companies may now freely copy libraries of declaring code whenever it is more convenient than writing their own, others will likely hesitate to spend the resources Oracle did to create intuitive, well-

[8] Rahman, Android Version Distribution Statistics Will Now Only Be Available in Android Studio (Apr. 10, 2020), https://www.xda-developers.com/android-version-distribution-statistics-android-studio.

organized libraries that attract programmers and could compete with Android. If the majority is worried about monopolization, it ought to consider whether Google is the greater threat.

By copying Oracle's work, Google decimated Oracle's market and created a mobile operating system now in over 2.5 billion actively used devices, earning tens of billions of dollars every year. If these effects on Oracle's potential market *favor* Google, something is very wrong with our fair-use analysis.

C. The Purpose and Character of the Use

The second-most important factor—"the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes," § 107(1)—requires us to consider whether use was "commercial" and whether it was "transformative." *Campbell*, 510 U. S., at 578–579. Both aspects heavily favor Oracle.

Begin with the overwhelming commercial nature of Google's copying. In 2015 alone, the year before the fair-use trial, Google earned $18 billion from Android. That number has no doubt dramatically increased as Android has grown to dominate the global market share.[9] On this scale, Google's use of Oracle's declaring code weighs heavily—if not decisively—against fair use.

The majority attempts to dismiss this overwhelming commercial use by noting that commercial use does "not neces-

[9] The real value also may be much higher because Android indirectly boosts other sources of revenue. For years Google has set its search engine as the default engine on Android. Google can use that engine to collect reams of data used to deliver behavioral advertisements to consumers on desktops. Using control over Android to choose a default search engine may seem trivial, but Google certainly does not think so. According to a Goldman Sachs analysis, Google paid Apple *$12 billion* to be the default search engine for Safari, Apple's web browser, for just one year. Leswing, Apple Makes Billions From Google's Dominance in Search—And It's a Bigger Business Than iCloud or Apple Music, Business Insider, Sept. 29, 2018. Google does not appear to have disputed this figure.

sarily" weigh against fair use. *Ante*, at 32. True enough. Commercial use sometimes can be overcome by use that is sufficiently "transformative." *Campbell*, 510 U. S., at 579. But "we cannot ignore [Google's] *intended purpose* of supplanting [Oracle's] commercially valuable" platform with its own. *Harper*, 471 U. S., at 562 (emphasis in original). Even if we could, we have never found fair use for copying that reaches into the tens of billions of dollars and wrecks the copyright holder's market.

Regardless, Google fares no better on transformative use. A court generally cannot find fair use unless the copier's use is transformative.[10] A work is "transformative" if it "adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message." *Campbell*, 510 U. S., at 579. This question is "guided by the examples [of fair use] given in the preamble to § 107." *Id.*, at 578. Those examples include: "criticism, comment, news reporting, teaching . . . , scholarship, or research." § 107. Although these examples are not exclusive, they are illustrative, and Google's repurposing of Java code from larger computers to smaller computers resembles none of them. Google did not use Oracle's code to teach or reverse engineer a system to ensure compatibility. Instead, to "avoid the drudgery in working up something fresh," *id.*, at 580, Google used the declaring code for the same exact purpose Oracle did. As the Federal Circuit correctly determined, "[t]here is nothing fair about taking a copyrighted work verbatim and using it for the same purpose and function as the original in a competing platform." 886 F. 3d, at 1210.

The majority acknowledges that Google used the copied declaring code "for the same reason" Oracle did. *Ante*,

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[10] Although "transformative use is not *absolutely* necessary" every time, *Campbell* v. *Acuff-Rose Music, Inc.*, 510 U. S. 569, 579, and n. 11 (1994) (emphasis added), as a general matter "the fair use doctrine has always precluded a use that 'supersedes the use of the original,'" *Harper*, 471 U. S., at 550 (brackets omitted).

at 30. So, by turns, the majority transforms the definition of "transformative." Now, we are told, "transformative" simply means—at least for computer code—a use that will help others "create new products." *Ibid.*; accord, *ante*, at 31 (Google's copying "can further the development of computer programs").

That new definition eviscerates copyright. A movie studio that converts a book into a film without permission not only creates a new product (the film) but enables others to "create products"—film reviews, merchandise, YouTube highlight reels, late night television interviews, and the like. Nearly every computer program, once copied, can be used to create new products. Surely the majority would not say that an author can pirate the next version of Microsoft Word simply because he can use it to create new manuscripts.[11]

Ultimately, the majority wrongly conflates transformative use with derivative use. To be transformative, a work must do something fundamentally different from the original. A work that simply serves the same purpose in a new context—which the majority concedes is true here—is derivative, not transformative. Congress made clear that Oracle holds "the exclusive rights . . . to prepare derivative works." § 106(2). Rather than create a transformative product, Google "profit[ed] from exploitation of the copyrighted material without paying the customary price." *Harper*, 471 U. S., at 562.

D. The Amount and Substantiality of the Portion Used

The statutory fair-use factors also instruct us to consider "the amount and substantiality of the portion used in relation to the copyrighted work as a whole." § 107(3). In general, the greater the amount of use, the more likely the copying is unfair. *Ibid.* But even if the copier takes only a

[11] Because the majority's reasoning would undermine copyright protection for so many products long understood to be protected, I understand the majority's holding as a good-for-declaring-code-only precedent.

small amount, copying the "'heart'" or "focal points" of a work weighs against fair use, *Harper*, 471 U. S., at 565–566, unless "'no more was taken than necessary'" for the copier to achieve transformative use, *Campbell*, 510 U. S., at 589.

Google does not dispute the Federal Circuit's conclusion that it copied the heart or focal points of Oracle's work. 886 F. 3d, at 1207. The declaring code is what attracted programmers to the Java platform and why Google was so interested in that code. And Google copied that code "verbatim," which weighs against fair use. *Harper*, 471 U. S., at 565. The majority does not disagree. Instead, it concludes that Google took no more than necessary to create new products. That analysis fails because Google's use is not transformative. *Campbell*, 510 U. S., at 586 (recognizing that this fourth factor "will harken back to the [purpose-and-character] statutory facto[r]"). This factor thus weighs against Google.

Even if Google's use were transformative, the majority is wrong to conclude that Google copied only a small portion of the original work. The majority points out that the 11,500 lines of declaring code—enough to fill about 600 pages in an appendix, Tr. of Oral Arg. 57—were just a fraction of the code in the Java platform. But the proper denominator is *declaring code*, not all code. A copied work is quantitatively substantial if it could "serve as a market substitute for the original" work or "potentially licensed derivatives" of that work. *Campbell*, 510 U. S., at 587. The declaring code is what attracted programmers. And it is what made Android a "market substitute" for "potentially licensed derivatives" of Oracle's Java platform. Google's copying was both qualitatively and quantitatively substantial.

* * *

In sum, three of the four statutory fair-use factors weigh decidedly against Google. The nature of the copyrighted work—the sole factor possibly favoring Google—cannot by itself support a determination of fair use because holding otherwise would improperly override Congress' determination that declaring code is copyrightable.[12]

IV

The majority purports to save for another day the question whether declaring code is copyrightable. The only apparent reason for doing so is because the majority cannot square its fundamentally flawed fair-use analysis with a finding that declaring code is copyrightable. The majority has used fair use to eviscerate Congress' considered policy judgment. I respectfully dissent.

[12] To be sure, these factors are not necessarily exclusive, but they are "especially relevant," *Harper*, 471 U. S., at 560; the majority identifies no other relevant factors; and I can think of none that could overcome the overwhelming weight of these key factors.

TANDON ET AL. *v.* NEWSOM, GOVERNOR OF CALIFORNIA, ET AL.

ON APPLICATION FOR INJUNCTIVE RELIEF

No. 20A151. Decided April 9, 2021

Applicants challenge California's COVID–19 restrictions prohibiting private gatherings, including applicants' at-home religious exercise, from bringing together more than three households at one time. They seek to enjoin enforcement of those restrictions pending appeal to the Court of Appeals for the Ninth Circuit. The Ninth Circuit denied an injunction pending appeal. Applicants presented an emergency application for injunctive relief to JUSTICE KAGAN, which she referred to the Court.

Held: California is enjoined from enforcing the challenged restrictions against applicants' at-home religious exercise pending disposition of the appeal in the Ninth Circuit, as well as disposition of any petition for a writ of certiorari timely sought.

Government regulations trigger strict scrutiny when they treat any comparable secular activity more favorably than religious exercise. Comparability is concerned with the government interest asserted, not with whether persons undertake religious exercise for public or private reasons. Strict scrutiny requires the government to show that less restrictive alternatives, including precautions it permits secular activities, could not address the government's interest. Applicants entitled to an injunction remain entitled to relief where there is a constant threat that government officials will reimpose challenged restrictions. *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 592 U. S. 14; *South Bay United Pentecostal Church* v. *Newsom*, 592 U. S. 1243; *High Plains Harvest Church* v. *Polis*, 592 U. S. 1155.

Applicants are likely to succeed on the merits of their free exercise claim. California treats comparable secular activities more favorably, permitting them to bring together more than three households with certain precautions. Those public activities are comparable to applicants' private religious exercise. California did not show that less restrictive alternatives could not permit applicants to gather for at-home worship in larger numbers. Although California has changed the challenged policy, state officials retain authority to reinstate heightened restrictions. Applicants are irreparably harmed by the loss of free exercise rights for even minimal periods of time and the State has not shown that public health would be imperiled by less restrictive measures.

Application for injunction granted.

PER CURIAM.

The application for injunctive relief presented to JUSTICE KAGAN and by her referred to the Court is granted pending disposition of the appeal in the United States Court of Appeals for the Ninth Circuit and disposition of the petition for a writ of certiorari, if such writ is timely sought. Should the petition for a writ of certiorari be denied, this order shall terminate automatically. In the event the petition for a writ of certiorari is granted, the order shall terminate upon the sending down of the judgment of this Court.

* * *

The Ninth Circuit's failure to grant an injunction pending appeal was erroneous. This Court's decisions have made the following points clear.

First, government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise. *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 592 U. S. 14, 18 (2020) (*per curiam*). It is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue. *Id.*, at 28–29 (KAVANAUGH, J., concurring).

Second, whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue. *Id.*, at 17 (*per curiam*) (describing secular activities treated more favorably than religious worship that either "have contributed to the spread of COVID–19" or "could" have presented similar risks). Comparability is concerned with the risks various activities pose, not the reasons why people gather. *Id.*, at 22 (GORSUCH, J., concurring).

Third, the government has the burden to establish that the challenged law satisfies strict scrutiny. To do so in this context, it must do more than assert that certain risk factors "are always present in worship, or always absent from the other secular activities" the government may allow. *South Bay United Pentecostal Church* v. *Newsom*, 592 U. S. 1243, 1246 (2021) (statement of GORSUCH, J.); *id.*, at 1245 (BARRETT, J., concurring). Instead, narrow tailoring requires the government to show that measures less restrictive of the First Amendment activity could not address its interest in reducing the spread of COVID. Where the government permits other activities to proceed with precautions, it must show that the religious exercise at issue is more dangerous than those activities even when the same precautions are applied. Otherwise, precautions that suffice for other activities suffice for religious exercise too. *Roman Catholic Diocese*, 592 U. S., at 18–19; *South Bay*, 592 U. S., at 1247 (statement of GORSUCH, J.).

Fourth, even if the government withdraws or modifies a COVID restriction in the course of litigation, that does not necessarily moot the case. And so long as a case is not moot, litigants otherwise entitled to emergency injunctive relief remain entitled to such relief where the applicants "remain under a constant threat" that government officials will use their power to reinstate the challenged restrictions. *Roman Catholic Diocese*, 592 U. S., at 20; see also *High Plains Harvest Church* v. *Polis*, 592 U. S. 1155 (2020).

These principles dictated the outcome in this case, as they did in *Gateway City Church* v. *Newsom*, 592 U. S. 1301 (2021). First, California treats some comparable secular activities more favorably than at-home religious exercise, permitting hair salons, retail stores, personal care services, movie theaters, private suites at sporting events and concerts, and indoor restaurants to bring together more than three households at a time. App. to Emergency Application for Writ of Injunction 183–189. Second, the Ninth Circuit did not conclude that those activities pose a lesser risk of transmission than *applicants'* proposed religious exercise at home. The

Ninth Circuit erroneously rejected these comparators simply because this Court's previous decisions involved public buildings as opposed to private buildings. *Tandon* v. *Newsom*, 992 F. 3d 916, 919–920, 922–924 (CA9 2021). Third, instead of requiring the State to explain why it could not safely permit at-home worshipers to gather in larger numbers while using precautions used in secular activities, the Ninth Circuit erroneously declared that such measures might not "translate readily" to the home. *Id.*, at 926. The State cannot "assume the worst when people go to worship but assume the best when people go to work." *Roberts* v. *Neace*, 958 F. 3d 409, 414 (CA6 2020) (*per curiam*). And fourth, although California officials changed the challenged policy shortly after this application was filed, the previous restrictions remain in place until April 15th, and officials with a track record of "moving the goalposts" retain authority to reinstate those heightened restrictions at any time. *South Bay*, 592 U. S., at 1249 (statement of GORSUCH, J.).

Applicants are likely to succeed on the merits of their free exercise claim; they are irreparably harmed by the loss of free exercise rights "for even minimal periods of time"; and the State has not shown that "public health would be imperiled" by employing less restrictive measures. *Roman Catholic Diocese*, 592 U. S., at 19. Accordingly, applicants are entitled to an injunction pending appeal.

This is the fifth time the Court has summarily rejected the Ninth Circuit's analysis of California's COVID restrictions on religious exercise. See *Harvest Rock Church* v. *Newsom*, 592 U. S. 1254 (2020); *South Bay*, 592 U. S. 1243; *Gish* v. *Newsom*, 592 U. S. 1255 (2021); *Gateway City*, 592 U. S. 1301. It is unsurprising that such litigants are entitled to relief. California's Blueprint System contains myriad exceptions and accommodations for comparable activities, thus requiring the application of strict scrutiny. And historically, strict scrutiny requires the State to further "interests of the highest order" by means "narrowly tailored in pursuit of those interests." *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520, 546 (1993) (internal quotation marks omitted). That standard "is not watered down"; it "really means what it says." *Ibid.* (quotation altered).

It is so ordered.

THE CHIEF JUSTICE would deny the application.

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

I would deny the application largely for the reasons stated in *South Bay United Pentecostal Church* v. *Newsom*, 592 U. S. 1243 (2021) (KAGAN, J., dissenting). The First Amendment requires that a State treat religious conduct as well as the State treats comparable secular conduct. Sometimes finding the right secular analogue may raise hard questions. But not today. California limits religious gatherings in homes to three households. If the State also limits all secular gatherings in homes to three households, it has complied with the First Amendment. And the State does exactly that: It has adopted a blanket restriction on at-home gatherings of all kinds, religious and secular alike. California need not, as the *per curiam* insists, treat at-home religious gatherings the same as hardware stores and hair salons—and thus unlike at-home secular gatherings, the obvious comparator here. As the *per curiam*'s reliance on separate opinions and unreasoned orders signals, the law does not require that the State equally treat apples and watermelons.

And even supposing a court should cast so expansive a comparative net, the *per curiam*'s analysis of this case defies the factual record. According to the *per curiam*, "the Ninth Circuit did not conclude that" activities like frequenting stores or salons "pose a lesser risk of transmission" than applicants' at-home religious activities. *Ante*, at 63. But Judges Milan Smith and Bade explained for the court that those activities do pose lesser risks for at least three reasons. First, "when people gather in social settings, their interactions are likely to be longer than they would be in a commercial setting," with participants "more likely to be involved in prolonged conversations." *Tandon* v. *Newsom*, 992 F. 3d 916, 925 (CA9 2021). Second, "private houses are typically smaller and less ventilated than commercial establishments." *Ibid.* And third, "social distancing and mask-wearing are less likely in private settings and enforcement is more difficult." *Ibid.* These are not the mere musings of two appellate judges: The district court found each of these facts based on the uncontested testimony of California's public-health experts. *Tandon* v. *Newsom*, 517 F. Supp. 3d 922, 964 (ND Cal. 2021); see *Tandon*, 922 F. 3d, at 925 (noting that the applicants "do not dispute any of these findings"). No doubt this evidence is inconvenient for the *per curiam*'s preferred result. But the Court has no warrant to ignore the record in a case that (on its own view, see *ante*, at 62) turns on risk assessments.

In ordering California to weaken its restrictions on at-home gatherings, the majority yet again "insists on treating unlike cases, not like ones, equivalently." *South Bay*, 592 U. S., at 1253 (KAGAN, J., dissenting). And it once more commands California "to ignore its experts' scientific findings," thus impairing "the State's effort to address a public health emergency." *Ibid.* Because the majority continues to disregard law and facts alike, I respectfully dissent from this latest *per curiam* decision.

AMG CAPITAL MANAGEMENT, LLC, ET AL. *v.* FEDERAL TRADE COMMISSION

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

No. 19–508. Argued January 13, 2021—Decided April 22, 2021

The Federal Trade Commission filed a complaint against Scott Tucker and his companies alleging deceptive payday lending practices in violation of § 5(a) of the Federal Trade Commission Act. The District Court granted the Commission's request pursuant to § 13(b) of the Act for a permanent injunction to prevent Tucker from committing future violations of the Act, and relied on the same authority to direct Tucker to pay $1.27 billion in restitution and disgorgement. On appeal, the Ninth Circuit rejected Tucker's argument that § 13(b) does not authorize the award of equitable monetary relief.

Held: Section 13(b) does not authorize the Commission to seek, or a court to award, equitable monetary relief such as restitution or disgorgement. Pp. 71–82.

(a) Congress granted the Commission authority to enforce the Act's prohibitions on "unfair or deceptive acts or practices," 15 U. S. C. §§ 45(a)(1)–(2), by commencing administrative proceedings pursuant to § 5 of the Act. Section 5(*l*) of the Act authorizes the Commission, following completion of the administrative process and the issuance of a final cease and desist order, to seek civil penalties, and permits district courts to "grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission." § 45(*l*). Section 19 of the Act further authorizes district courts (subject to various conditions and limitations) to grant "such relief as the court finds necessary to redress injury to consumers," § 57b(b), in cases where someone has engaged in unfair or deceptive conduct with respect to which the Commission has issued a final cease and desist order applicable to that person, see § 57b(a)(2). Here, the Commission responded to Tucker's payday lending practices by seeking equitable monetary relief directly in district court under § 13(b)'s authorization to seek a "permanent injunction." In doing so, the Commission acted in accordance with its increasing tendency to use § 13(b) to seek monetary awards without prior use of the Commission's traditional administrative proceedings. The desirability of the Commission's practice aside, the question is whether Congress, by enacting

§ 13(b) and using the words "permanent injunction," granted the Commission authority to obtain monetary relief directly from courts and effectively bypass the requirements of the administrative process. Pp. 71–74.

(b) Section 13(b) does not explicitly authorize the Commission to obtain court-ordered monetary relief, and such relief is foreclosed by the structure and history of the Act. Section 13(b) provides that the "Commission may seek . . . a permanent injunction." § 53(b). By its terms, this provision concerns prospective injunctive relief, not retrospective monetary relief. Section 13(b) allows the Commission to go directly to district court when the Commission seeks injunctive relief pending administrative proceedings or when it seeks only a permanent injunction. Other statutory provisions, in particular the conditioned and limited monetary relief authorized in § 19, confirm this conclusion. It is highly unlikely that Congress, without mentioning the matter, would grant the Commission authority to circumvent its traditional § 5 administrative proceedings. Pp. 75–78.

(c) The Commission's contrary arguments are unavailing. First, *Porter* v. *Warner Holding Co.*, 328 U. S. 395, and *Mitchell* v. *Robert DeMario Jewelry, Inc.*, 361 U. S. 288, did not adopt a universal rule that statutory authority to grant an injunction automatically encompasses the power to grant equitable monetary remedies. Instead, the text and structure of the particular statutory scheme at issue can limit a court's jurisdiction in equity. Second, in enacting § 19 two years after § 13(b), Congress did not simply create an alternative enforcement path with similar remedies. The Court does not believe Congress would have enacted § 19's provisions expressly authorizing monetary relief if § 13(b) already implicitly allowed the Commission to obtain that same monetary relief without satisfying § 19's conditions and limitations. Third, § 19's saving clauses—preserving "any authority of the Commission under any other provision of law" and "any other remedy or right of action provided by State or Federal law," § 57b(e)—do not help answer whether § 13(b) gave the Commission the authority to obtain equitable monetary relief directly in court in the first place. Fourth, the Act's 1994 and 2006 amendments, which did not modify the specific language at issue here, do not demonstrate congressional acquiescence to lower court rulings that favor the Commission's interpretation of § 13(b). Fifth, policy arguments that § 5 and § 19 are inadequate to provide redress to consumers should be addressed to Congress. Pp. 78–82.

910 F. 3d 417, reversed and remanded.

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

Michael G. Pattillo, Jr., argued the cause for petitioners. With him on the briefs were *Jeffrey A. Lamken*, *Sarah J. Newman*, and *Paul C. Ray*.

Joel R. Marcus argued the cause for respondent. With him on the brief were *Alden F. Abbott*, *Michael Bergman*, *Theodore Metzler*, and *Matthew M. Hoffman.**

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*Briefs of *amici curiae* urging reversal were filed for Americans for Prosperity Foundation by *Cynthia Fleming Crawford* and *Michael Pepson*; for the Chamber of Commerce of the United States of America et al. by *Ilana H. Eisenstein* and *Daryl Joseffer*; for the New Civil Liberties Alliance by *John J. Vecchione* and *Richard Samp*; for the Pharmaceutical Research and Manufacturers of America by *John D. Graubert, Melissa B. Kimmel*, and *David E. Korn*; for Surescripts, LLC, by *Roman Martinez, Amanda P. Reeves*, and *Alfred C. Pfeiffer, Jr.*; for TechFreedom by *Asheesh Agarwal* and *Corbin K. Barthold*; and for the Washington Legal Foundation et al. by *Cory L. Andrews.*

Briefs of *amici curiae* urging affirmance were filed for the State of Illinois et al. by *Kwame Raoul*, Attorney General of Illinois, *Jane Elinor Notz,* Solicitor General, *Sarah A. Hunger,* Deputy Solicitor General, and *Carson R. Griffis*, Assistant Attorney General, and by the Attorneys General for their respective jurisdictions as follows: *Clyde Sniffen, Jr.*, of Alaska, *Xavier Becerra* of California, *Phil Weiser* of Colorado, *William Tong* of Connecticut, *Kathleen Jennings* of Delaware, *Karl A. Racine* of the District of Columbia, *Clare E. Connors* of Hawaii, *Curtis T. Hill, Jr.*, of Indiana, *Thomas J. Miller* of Iowa, *Aaron M. Frey* of Maine, *Brian E. Frosh* of Maryland, *Maura Healey* of Massachusetts, *Dana Nessel* of Michigan, *Keith Ellison* of Minnesota, *Douglas J. Peterson* of Nebraska, *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, *Dave Yost* of Ohio, *Ellen F. Rosenblum* of Oregon, *Josh Shapiro* of Pennsylvania, *Peter F. Neronha* of Rhode Island, *Jason R. Ravnsborg* of South Dakota, *Thomas J. Donovan, Jr.*, of Vermont, *Mark R. Herring* of Virginia, *Robert W. Ferguson* of Washington, and *Josh Kaul* of Wisconsin; for the American Antitrust Institute by *Jennifer D. Bennett, Matthew W. H. Wessler,* and *Randy M. Stutz*; for Former Federal Trade Commission Officials by *David C. Vladeck* and *Rachel L. Fried*; for the National Consumer Law Center et al. by *Stuart T. Rossman, Jonathan Marshall, Jeffrey Gentes, J. L. Pottenger, Jr.*, and *Seth E. Mermin*; for Public Citizen by *Nandan M. Joshi, Scott L. Nelson,* and *Allison M. Zieve*; for Remedies Law Scholars et al. by *Phillip R. Malone*; and for Truth in Advertising, Inc., by *David T. Goldberg* and *Bonnie L. Patten*.

Briefs of *amici curiae* were filed for the Open Markets Institute by *Jay L. Himes*; and for SBH A&I by *Daryl M. Williams*.

Justice Breyer delivered the opinion of the Court.

Section 13(b) of the Federal Trade Commission Act authorizes the Commission to obtain, "in proper cases," a "permanent injunction" in federal court against "any person, partnership, or corporation" that it believes "is violating, or is about to violate, any provision of law" that the Commission enforces. 87 Stat. 592, 15 U. S. C. § 53(b). The question presented is whether this statutory language authorizes the Commission to seek, and a court to award, equitable monetary relief such as restitution or disgorgement. We conclude that it does not.

I

Petitioner Scott Tucker controlled several companies that provided borrowers with short-term payday loans. The companies, operating online, would show a potential customer a loan's essential terms. When the companies explained those terms, they misled many customers. The companies' written explanations seemed to say that customers could normally repay a loan by making a single payment. And that payment would cost a person who, for example, borrowed $300 an extra $90. (The customer would likely repay a total of $390.) But in fine print the explanations said that the loan would be automatically renewed unless the customer took affirmative steps to opt out. Thus, unless the customer who borrowed $300 was aware of the fine print and actively prevented the loan's automatic renewal, he or she could end up having to pay $975, not $390. Between 2008 and 2012, Tucker's businesses made more than 5 million payday loans, amounting to more than $1.3 billion in deceptive charges.

In 2012 the Federal Trade Commission filed suit and claimed that Tucker and his companies were engaging in "unfair or deceptive acts or practices in or affecting commerce," in violation of § 5(a) of the Act. 15 U. S. C. § 45(a)(1). (We shall refer to all of the defendants collectively as Tucker.) In asserting that Tucker's practices were likely to mislead consumers, the Commission did not first use its own administrative proceedings. Rather, the Commission filed a complaint against Tucker directly in federal court. The Commission, relying upon § 13(b), asked the court to issue a permanent injunction to prevent Tucker from committing future violations of the Act. Relying on the same provision, the Commission also asked the court to order monetary relief, in particular, restitution and disgorgement. The Commission moved for summary judgment.

The District Court granted the Commission's summary judgment motion. The court also granted the Commission's request for an injunction and directed Tucker to pay $1.27 billion in restitution and disgorgement. The court ordered the Commission to use these funds first to provide "direct redress to consumers" and then to provide "other equitable relief" reasonably related to Tucker's alleged business practices. Finally, the court ordered the Commission to deposit any remaining funds in the United States Treasury as disgorgement.

On appeal, Tucker argued that § 13(b) does not authorize the monetary relief the District Court had granted. The Ninth Circuit rejected Tucker's claim. 910 F. 3d 417 (2018). It pointed to Circuit precedent that had interpreted § 13(b) as "empower[ing] district courts to grant any ancillary relief necessary to accomplish complete justice, including restitution." *FTC* v. *Commerce Planet, Inc.*, 815 F. 3d 593, 598 (2016); see also *FTC* v. *H. N. Singer, Inc.*, 668 F. 2d 1107, 1113 (CA9 1982). Two judges, while recognizing that precedent in many Circuits supported that use of § 13(b), expressed doubt as to the correctness of that precedent.

Tucker then sought certiorari in this Court. In light of recent differences that have emerged among the Circuits as to the scope of § 13(b), we granted his petition.

II

The Federal Trade Commission Act prohibits, and authorizes the Commission to prevent, "[u]nfair methods of competition" and "unfair or deceptive acts or practices." 15 U. S. C. §§ 45(a)(1)–(2). The Act permits the Commission to use both its own administrative proceedings (set forth in § 5 of the Act) and court actions in exercising this authority. In construing § 13(b), it is helpful to understand how the Commission's authority (and its interpretation of that authority) has evolved over time.

Ever since the Commission's creation in 1914, it has been authorized to enforce the Act through its own administrative proceedings. Section 5 of the Act describes the relevant administrative proceedings in some detail. If the Commission has "reason to believe" that a party "has been or is using any unfair method of competition or unfair or deceptive act or practice," it can file a complaint against the claimed violator and adjudicate its claim before an Administrative Law Judge. § 45(b). The ALJ then conducts a hearing and writes a report setting forth findings of fact and reaching a legal conclusion. *Ibid.* If the ALJ concludes that the conduct at issue was unfair or misleading, the ALJ will issue an order requiring the party to cease and desist from engaging in the unlawful conduct. *Ibid.* The party may then seek review before the Commission and eventually in a court of appeals, where the "findings of the Commission as to the facts" (if supported by the evidence) "shall be conclusive." § 45(c). If judicial review favors the Commission (or if the time to seek judicial review expires), the Commission's order normally becomes final (and enforceable). § 45(g).

In the 1970s Congress authorized the Commission to seek additional remedies in court. In 1973 Congress added § 13(b), the provision at issue here. That provision permits the Commission to proceed directly to court (prior to issuing a cease and desist order) to obtain a "temporary restraining order or a preliminary injunction," and also allows the Commission, "in proper cases," to obtain a court-ordered "permanent injunction." 15 U. S. C. § 53(b). In the same legislation, Congress also amended § 5(*l*) of the Act to authorize district courts to award civil penalties against respondents who violate final cease and desist orders, and to "grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission." § 45(*l*). Two years later, Congress enacted § 19 of the Act, which authorizes district courts to grant "such relief as the court finds necessary to redress injury to consumers," including through the "refund of money or return of property." § 57b(b). However, Congress specified that the consumer redress available under § 19 could be sought only (as relevant here, and subject to various conditions and limitations) against those who have "engage[d] in any unfair or deceptive act or practice . . . with respect to which the Commission has issued a final cease and desist order which is applicable to such person." § 57b(a)(2).

Beginning in the late 1970s, the Commission began to use § 13(b), and in particular the words "permanent injunction," to obtain court orders for redress of various kinds in consumer protection cases—without prior use of the administrative proceedings in § 5. See, *e. g.*, *FTC* v. *Virginia Homes Mfg. Corp.*, 509 F. Supp. 51, 59 (Md. 1981) (relying on § 13(b) to order the defendant to notify past customers of their warranty rights); see also D. FitzGerald, The Genesis of Consumer Protection Remedies Under Section 13(b) of the FTC Act 1–2, Paper at FTC 90th Anniversary Symposium, Sept. 23, 2004 (FitzGerald); Beales & Muris, Striking the Proper Balance: Redress Under Section 13(b) of the FTC Act, 79 Antitrust L. J. 1, 3–4 (2013). The Commission used this authority to seek and win restitution and other forms of equitable monetary relief directly in court.

Similarly, in the late 1990s the Commission began to use § 13(b)'s "permanent injunction" authority in antitrust cases to seek monetary awards, such as restitution and disgorgement—again without prior use of traditional administrative proceedings. See Complaint in *FTC* v. *Mylan Labs., Inc.*, No. 98–3114 (DC); Complaint in *FTC* v. *The Hearst Trust*, No. 01–734 (DC). In 2003 the Commission issued guidance that limited its use of § 13(b) to obtain monetary relief to "exceptional cases" involving a "[c]lear [v]iolation" of the antitrust laws. Policy Statement on Monetary Equitable Remedies in Competition Cases, 68 Fed. Reg. 45821 (emphasis deleted). But in 2012 the Commission withdrew its policy statement and the limitations it imposed. See Withdrawal of the Commission Policy Statement on Monetary Equitable Remedies in Competition Cases, 77 Fed. Reg. 47071.

The result is that the Commission presently uses § 13(b) to win equitable monetary relief directly in court with great frequency. The Commission tells us that "the agency [now] brings dozens of [§ 13(b)] cases every year seeking a permanent injunction and the return of illegally obtained funds." Brief for Respondent 8; see also, *e. g.*, Ohlhausen, Dollars, Doctrine, and Damage Control: How Disgorgement Affects the FTC's Antitrust Mission 7, Speech at Dechert LLP, NY, Apr. 20, 2016 (Commission sought disgorgement in antitrust cases four times between 2012 and 2016, which is "as many times as the [Commission] pursued such relief in the prior twenty years"). With respect to consumer protection cases, the Commission adds that "there's no question that the agency brings far more cases in court than it does in the administrative process." Tr. of Oral Arg. 49. In fiscal year 2019, for example, the Commission filed 49 complaints in federal court and obtained 81 permanent injunctions and orders, resulting in $723.2 million in consumer redress or disgorgement. See FTC, Fiscal Year 2021 Congressional Budget Justification 5 (Feb. 10, 2020), https://www.ftc.gov/system/files/documents/reports/fy-2021-congressional-budget-justification/fy_2021_cbj_final.pdf. In the same period, the Commission issued only 21 new administrative complaints and 21 final administrative orders.

Our task here is not to decide whether this substitution of § 13(b) for the administrative procedure contained in § 5 and the consumer redress available under § 19 is desirable. Rather, it is to answer a more purely legal question: Did Congress, by enacting § 13(b)'s words, "permanent injunction," grant the Commission authority to obtain monetary relief directly from courts, thereby effectively bypassing the process set forth in § 5 and § 19?

III

Several considerations, taken together, convince us that § 13(b)'s "permanent injunction" language does not authorize the Commission directly to obtain court-ordered monetary relief. For one thing, the language refers only to injunctions. It says, "in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent *injunction*." 15 U. S. C. § 53(b) (emphasis added). An "injunction" is not the same as an award of equitable monetary relief. Compare, *e. g.*, *United States* v. *Oregon State Medical Soc.*, 343 U. S. 326, 333 (1952) (injunction typically offers prospective relief against ongoing or future harm), with, *e. g.*, 1 D. Dobbs, Law of Remedies § 4.1(1) (2d ed. 1993) (restitution typically offers retrospective relief to redress past harm). We have, however, sometimes interpreted similar language as authorizing judges to order equitable monetary relief. See *Porter* v. *Warner Holding Co.*, 328 U. S. 395 (1946); *Mitchell* v. *Robert DeMario Jewelry, Inc.*, 361 U. S. 288 (1960).

But if this language alone is not enough, there is more. The language and structure of § 13(b), taken as a whole, indicate that the words "permanent injunction" have a limited purpose—a purpose that does not extend to the grant of monetary relief. Those words are buried in a lengthy provision that focuses upon purely injunctive, not monetary, relief. It says (in relevant part):

> "Whenever the Commission has reason to believe—
>
> "(1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and
>
> "(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public—
>
> "the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of

> the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond: *Provided*, *however*, That if a complaint is not filed within such period (not exceeding 20 days) as may be specified by the court after issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect: *Provided further*, That *in proper cases the Commission may seek*, *and after proper proof*, *the court may issue*, *a permanent injunction.*" 15 U. S. C. § 53(b) (final emphasis added).

Taken as a whole, the provision focuses upon relief that is prospective, not retrospective. Consider the words "is violating" and "is about to violate" (not "has violated") setting forth when the Commission may request injunctive relief. Consider too the words "pending the issuance of a complaint," "until such complaint is dismissed," "temporary restraining order," "preliminary injunction," and so forth in the first half of the section. These words reflect that the provision addresses a specific problem, namely, that of stopping seemingly unfair practices from taking place while the Commission determines their lawfulness. Cf. § 53(a) (providing similar provisional relief where false advertising regarding food, drugs, devices, and cosmetics is at issue). And the appearance of the words "permanent injunction" (as a proviso) suggests that those words are directly related to a previously issued preliminary injunction. They might also be read, for example, as granting authority for the Commission to go one step beyond the provisional and ("in proper cases") dispense with administrative proceedings to seek what the words literally say (namely, an *injunction*). But to read those words as allowing what they do not say, namely, as allowing the Commission to dispense with administrative proceedings to obtain monetary relief as well, is to read the words as going well beyond the provision's subject matter. In light of the historical importance of administrative proceedings, that reading would allow a small statutory tail to wag a very large dog.

Further, the structure of the Act beyond § 13(b) confirms this conclusion. Congress in § 5(*l*) and § 19 gave district courts the authority to impose limited monetary penalties and to award monetary relief in cases where the Commission has *issued cease and desist orders*, *i. e.*, where the Commission has engaged in administrative proceedings. Since in these provisions Congress explicitly provided for "other and further equitable relief," 15 U. S. C. § 45(*l*), and for the "refund of money or return of property," § 57b(b), it likely did not intend for § 13(b)'s more cabined "permanent injunction" language to have similarly broad scope.

More than that, the latter provision (§ 19) comes with certain important limitations that are absent in § 13(b). As relevant here, § 19 applies only where the Commission begins its § 5 process within three years of the underlying violation and seeks monetary relief within one year of any resulting final cease and desist order. 15 U. S. C. § 57b(d). And it applies only where "a reasonable man would have known under the circumstances" that the conduct at issue was "dishonest or fraudulent." § 57b(a)(2); see also § 45(m)(1)(B)(2) (providing court-ordered monetary penalties against anyone who engages in conduct previously identified as prohibited in a final cease and desist order, but only if the violator acted with "actual knowledge that such act or practice is unfair or deceptive"). In addition, Congress enacted these other, more limited, monetary relief provisions at the same time as, or a few years after, it enacted § 13(b) in 1973.

It is highly unlikely that Congress would have enacted provisions expressly authorizing *conditioned* and *limited* monetary relief if the Act, via § 13(b), had already implicitly allowed the Commission to obtain that same monetary relief and more without satisfying those conditions and limitations.

Nor is it likely that Congress, without mentioning the matter, would have granted the Commission authority so readily to circumvent its traditional § 5 administrative proceedings. See FitzGerald 1 (arguing that, in the mid-1970s, "no one imagined that Section 13(b) of the [FTC] Act would become an important part of the Commission's consumer protection program" (footnote omitted)).

At the same time, to read § 13(b) to mean what it says, as authorizing injunctive but not monetary relief, produces a coherent enforcement scheme: The Commission may obtain monetary relief by first invoking its administrative procedures and then § 19's redress provisions (which include limitations). And the Commission may use § 13(b) to obtain injunctive relief while administrative proceedings are foreseen or in progress, or when it seeks only injunctive relief. By contrast, the Commission's broad reading would allow it to use § 13(b) as a substitute for § 5 and § 19. For the reasons we have just stated, that could not have been Congress' intent. Cf. *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 468 (2001) ("Congress . . . does not . . . hide elephants in mouseholes").

IV

The Commission makes several arguments to the contrary. First, the Commission points to traditional equitable practice and to two previous cases where we interpreted provisions authorizing injunctive relief to authorize equitable monetary relief as well. See *Porter* v. *Warner Holding Co.*, 328 U. S. 395 (1946); *Mitchell* v. *Robert DeMario Jewelry, Inc.*, 361 U. S. 288 (1960). In *Porter* we said that "[n]othing is more clearly a part of the subject matter of a suit for an injunction than the recovery of that which has been illegally acquired and which has given rise to the necessity for injunctive relief." 328 U. S., at 399. In *Mitchell* we said that, "[w]hen Congress entrusts to an equity court the enforcement of prohibitions contained in a regulatory enactment, it must be taken to have acted cognizant of the historic power of equity to provide complete relief in light of the statutory purposes."

361 U. S., at 291–292. The Commission argues that these cases consequently support the proposition that the traditional equitable "authority to grant an 'injunction' includes the power to grant restorative monetary remedies." Brief for Respondent 21.

The problem for the Commission is that we did not in these two cases purport to set forth a universal rule of interpretation. And both cases involved different statutes. See *Porter*, 328 U. S., at 397 (Emergency Price Control Act provision authorizing courts to issue " 'a permanent or temporary injunction, restraining order, or other order' "); *Mitchell*, 361 U. S., at 289 (Fair Labor Standards Act provision authorizing courts to " 'restrain violations' " of the Act's antiretaliation ban). In both cases, we recognized that the text and structure of the statutory scheme at issue can, "in so many words, or by a necessary and inescapable inference, restric[t] the court's jurisdiction in equity." *Porter*, 328 U. S., at 398; *Mitchell*, 361 U. S., at 291. Thus in *Porter* we examined "other provision[s] of the [Emergency Price Control] Act" to determine whether they "expressly or impliedly preclud[e] a court from ordering restitution in the exercise of its equity jurisdiction." 328 U. S., at 403. And in *Mitchell* we examined other provisions of the Fair Labor Standards Act before concluding that there was "no indication in the language" that the statute precluded equitable relief in the form of lost wages. 361 U. S., at 294.

Moreover, more recently, we have held, based on our reading of a statutory scheme as a whole, that a provision's grant of an "injunction" or other equitable powers does not automatically authorize a court to provide monetary relief. Rather, we have said, the scope of equitable relief that a provision authorizes "remains a question of interpretation in each case." *Mertens* v. *Hewitt Associates*, 508 U. S. 248, 257 (1993). Our decision in *Meghrig* v. *KFC Western, Inc.*, 516 U. S. 479 (1996), is instructive. There, we considered a provision in the Resource Conservation and Recovery Act that authorizes district courts "to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste," and "to order such person to take such other action as may be necessary, or both." 98 Stat. 3268, 42 U. S. C. § 6972(a). The question was whether this language permits courts to award restitution in the form of past cleanup costs. We concluded that, despite *Porter*, the provision's grant of equitable authority does not authorize past cleanup costs because the relevant statutory scheme (as here) contained other " 'elaborate enforcement provisions,' " including (as here) provisions that explicitly provide for that form of relief. *Meghrig*, 516 U. S., at 487. Here, the inference against § 13(b)'s authorization of monetary relief is strong and follows from the interpretive approach we took in *Meghrig*.

Second, the Commission argues that Congress simply created two enforcement avenues, one administrative and the other judicial, leaving the Commission the power to decide which of the two "separate, parallel enforcement paths" to take. Brief for Respondent 41. To the extent that § 19 authorizes "similar relief" as § 13(b), the Commission continues, that reflects only the fact that each pathway is an alternative route to "similar endpoints." *Id.*, at 41–42. This statement, however, does not overcome the interpretive difficulties we have set forth, for example permitting the Commission to avoid the conditions and limitations laid out in § 19. We cannot believe that Congress merely intended to enact a more onerous alternative to § 13(b) when it enacted § 19 two years later.

Third, the Commission points to saving clauses in § 19, which, it says, save its ability to use § 13(b) to obtain monetary relief. See *id.*, at 42. Those clauses preserve "any authority of the Commission under any other provision of law" and preserve "any other remedy or right of action provided by State or Federal law." 15 U. S. C. § 57b(e). Here, however, the question is not one of preserving pre-existing remedies given by other statutory provisions. The question is whether those other provisions (namely, § 13(b)) gave that remedy in the first place.

Fourth, the Commission points out that the courts of appeals have, until recently, consistently accepted its interpretation, and that Congress has in effect twice ratified that interpretation in subsequent amendments to the Act. See, *e. g.*, Brief for Respondent 8, and n. 3 (citing the similar conclusions of eight Circuits). But see *FTC* v. *Credit Bureau Center, LLC*, 937 F. 3d 764 (CA7 2019); *FTC* v. *AbbVie Inc.*, 976 F. 3d 327 (CA3 2020). We have held that Congress' acquiescence to a settled judicial interpretation can suggest adoption of that interpretation. See, *e. g.*, *Monessen Southwestern R. Co.* v. *Morgan*, 486 U. S. 330, 338 (1988). We have also said, however, that when "Congress has not comprehensively revised a statutory scheme but has made only isolated amendments . . . [i]t is impossible to assert with any degree of assurance that congressional failure to act represents affirmative congressional approval of [a court's] statutory interpretation." *Alexander* v. *Sandoval*, 532 U. S. 275, 292 (2001) (internal quotation marks omitted). We find this latter statement the more relevant here.

The two examples of acquiescence to which the Commission refers do not convince us that Congress acquiesced in the lower courts' interpretation. The Commission first points to amendments that Congress made to the Act in 1994. See § 10, 108 Stat. 1695–1696. Those two amendments, however, simply revised § 13(b)'s venue, joinder, and service rules, not its remedial provisions. They tell us nothing about the words "permanent injunction" in § 13(b).

The Commission also points to amendments made to the Act in 2006. Those amendments modified the scope of § 5 so that, where certain conduct in foreign commerce is involved, § 5 authorizes " '[a]ll remedies available to the Commission,' " including " 'restitution.' " See § 3, 120 Stat. 3372. We agree, however, that restitution is available, for example, when the Commission uses its administrative process. See, *e. g.*, 15 U. S. C. § 57b(b). That being so, these amendments also tell us nothing about the scope of § 13(b).

Fifth, the Commission and its *amici* emphasize the policy-related importance of allowing the Commission to use § 13(b) to obtain monetary relief. They suggest that it is undesirable simply to enjoin those who violate the Act while leaving them with profits earned at the unjustified expense of consumers. See, *e. g.*, Brief for Respondent 8–9; Brief for Truth in Advertising, Inc., as *Amicus Curiae* 7–13; Brief for American Antitrust Institute as *Amicus Curiae* 9–21; Brief for National Consumer Law Center et al. as *Amici Curiae* 10–20; Brief for Illinois et al. as *Amici Curiae* 5–11. They point to the billions of dollars that the Commission has returned to consumers as a result of the Commission's § 13(b) efforts. See, *e. g.*, Brief for Respondent 8–9; Brief for Illinois et al. as *Amici Curiae* 5.

Nothing we say today, however, prohibits the Commission from using its authority under § 5 and § 19 to obtain restitution on behalf of consumers. If the Commission believes that authority too cumbersome or otherwise inadequate, it is, of course, free to ask Congress to grant it further remedial authority. Indeed, the Commission has recently asked Congress for that very authority, see Hearing before the Senate Committee on Commerce, Science, and Transportation on Oversight of the Federal Trade Commission, Prepared Statement of the FTC, 116th Cong., 2d Sess., 3–5 (2020), and Congress has considered at least one bill that would do so, see S. 4626, 116th Cong., 2d Sess., § 403 (2020) (revising § 13 to expressly authorize restitution and disgorgement). We must conclude, however, that § 13(b) as currently written does not grant the Commission authority to obtain equitable monetary relief.

* * *

For these reasons, we reverse the Ninth Circuit's judgment, and we remand the case for further proceedings consistent with this opinion.

It is so ordered.

CARR ET AL. *v.* SAUL, COMMISSIONER OF SOCIAL SECURITY

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

No. 19–1442. Argued March 3, 2021—Decided April 22, 2021*

Petitioners are six individuals whose applications for disability benefits were denied by the Social Security Administration (SSA). They each unsuccessfully challenged their respective adverse benefit determination in a hearing before an SSA administrative law judge (ALJ). The SSA Appeals Council denied discretionary review in each case. Thereafter, this Court decided *Lucia* v. *SEC*, 585 U. S. 237, which held that the appointment of Securities and Exchange Commission ALJs by lower level staff violated the Constitution's Appointments Clause. Because the SSA ALJs who denied petitioners' claims were also appointed by lower level staff, petitioners argued in federal court that they were entitled to a fresh administrative review by constitutionally appointed ALJs. In each case, the Court of Appeals held that petitioners could not obtain judicial review of their Appointments Clause claims because they failed to raise those challenges in their administrative proceedings.

Held: The Courts of Appeals erred in imposing an issue-exhaustion requirement on petitioners' Appointments Clause claims. Pp. 88–96.

(a) Administrative review schemes commonly require parties to give the agency an opportunity to address an issue before seeking judicial review of that question. Such administrative issue-exhaustion requirements are typically creatures of statute or regulation. But where, as here, no statute or regulation imposes an issue-exhaustion requirement, courts decide whether to require issue exhaustion based on "an analogy to the rule that appellate courts will not consider arguments not raised before trial courts." *Sims* v. *Apfel*, 530 U. S. 103, 108–109. "[T]he desirability of a court imposing a requirement of issue exhaustion depends on the degree to which the analogy to normal adversarial litigation applies in a particular administrative proceeding." *Id.*, at 109. In *Sims*, which declined to apply an issue-exhaustion requirement to SSA Appeals Council proceedings, the Court explained that "the rationale for requiring issue exhaustion is at its greatest" when "the parties are expected to develop the issues in an adversarial administrative proceed-

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*Together with No. 20–105, *Davis et al.* v. *Saul*, *Commissioner of Social Security*, on certiorari to the United States Court of Appeals for the Eighth Circuit.

ing," but is "much weaker" when "an administrative proceeding is not adversarial." *Id.*, at 110. Although *Sims* dealt with administrative review before the SSA Appeals Council, much of the opinion's rationale applies equally to SSA ALJ proceedings. Pp. 88–91.

(b) Even assuming that ALJ proceedings are comparatively more adversarial than Appeals Council proceedings, the question remains whether the ALJ proceedings here were adversarial enough to support the "analogy to judicial proceedings" that undergirds judicially created issue-exhaustion requirements. *Sims*, 530 U. S., at 112 (plurality opinion). Pp. 91–96.

(1) In the specific context of petitioners' Appointments Clause challenges, two considerations tip the scales decidedly against imposing an issue-exhaustion requirement. First, agency adjudications are generally ill suited to address structural constitutional challenges, which usually fall outside the adjudicators' areas of technical expertise. See, *e. g.*, *Free Enterprise Fund* v. *Public Company Accounting Oversight Bd.*, 561 U. S. 477, 491. Second, this Court has consistently recognized a futility exception to exhaustion requirements. See, *e. g.*, *Bethesda Hospital Assn.* v. *Bowen*, 485 U. S. 399, 405–406. Both considerations apply fully here: Petitioners assert purely constitutional claims about which SSA ALJs have no special expertise and for which they can provide no relief. *United States* v. *L. A. Tucker Truck Lines, Inc.*, 344 U. S. 33, distinguished. Pp. 92–95.

(2) The Commissioner's contention that petitioners cannot obtain new hearings because they did not "timely challenge" their adjudicators' appointments presumes what the Commissioner has failed to prove: that petitioners' challenges are, in fact, untimely. The Commissioner's reliance on *Ryder* v. *United States*, 515 U. S. 177, and *Lucia*, 585 U. S. 237, is misplaced, as neither decision had occasion to opine on what would constitute a "timely" objection in an administrative review scheme like the SSA's. Pp. 95–96.

961 F. 3d 1267 and 963 F. 3d 790, reversed and remanded.

Sotomayor, J., delivered the opinion of the Court, in which Roberts, C. J., and Alito, Kagan, and Kavanaugh, JJ., joined, in which Thomas, Gorsuch, and Barrett, JJ., joined as to Parts I, II–A, and II–B–2, and in which Breyer, J., joined as to Parts I, II–B–1, and II–B–2. Thomas, J., filed an opinion concurring in part and concurring in the judgment, in which Gorsuch and Barrett, JJ., joined, *post*, p. 96. Breyer, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 97.

Sarah M. Harris argued the cause for petitioners in No. 19–1442. With her on the briefs were *Lisa S. Blatt* and *Charles L. McCloud*. *Kannon K. Shanmugam* filed a brief for petitioners in No. 20–105. With him on the briefs were *William T. Marks*, *Joel S. Johnson*, and *Mahesha P. Subbaraman*.

Austin L. Raynor argued the cause for respondent in both cases. With him on the brief were *Acting Solicitor General Prelogar*, *Acting Assistant Attorney General Boynton*, *Deputy Solicitor General Kneedler*, *Vivek Suri*, *Mark B. Stern*, *Joshua M. Salzman*, and *Daniel Aguilar*.†

JUSTICE SOTOMAYOR delivered the opinion of the Court.

When the Social Security Administration (SSA) denies a claim for disability benefits, a claimant who wishes to contest that decision in federal court must first seek a hearing before an administrative law judge (ALJ). The petitioners here did just that: They each unsuccessfully challenged an adverse benefits determination in ALJ proceedings, and they now ask for judicial review. Specifically, petitioners argue that they are entitled to new hearings before different ALJs because the ALJs who originally heard their cases were not properly appointed under the Appointments Clause of the U. S. Constitution. The question for the Court is whether petitioners forfeited their Appointments Clause challenges by failing to make them first to their respective ALJs. The Court holds that petitioners did not forfeit their claims.

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†Briefs of *amici curiae* urging reversal in both cases were filed for the Institute for Justice by *Robert E. Johnson* and *Anthony Sanders*; for the National Association of Disability Representatives by *Chanakya A. Sethi* and *Rakesh N. Kilaru*; for the National Organization of Social Security Claimants Representatives et al. by *Carolyn A. Kubitschek*, *Barbara R. Silverstone*, *Barbara Jones*, *Thomas D. Sutton*, and *Robert E. Rains*; for the New Civil Liberties Alliance et al. by *Jared McClain*, *Richard Samp*, and *Ilya Shapiro*; for the Pacific Legal Foundation by *Brian T. Hodges* and *Oliver J. Dunford*; and for Social Security Scholars et al. by *Jon C. Dubin*.

Alan B. Morrison and *Richard J. Pierce, Jr.*, filed a brief in both cases for the Collective of Social Security Administration Administrative Law Judges.

I

The six petitioners in these consolidated cases each applied for disability benefits between 2013 and 2015.[1] After their applications were denied, petitioners followed the prescribed steps for seeking administrative review. They sought reconsideration of the agency's initial determination, received a hearing before an ALJ, and requested review by the SSA's Appeals Council. See 20 CFR § 404.900(a). Petitioners were unsuccessful at every stage, concluding with the Appeals Council, which denied discretionary review.

This Court then held in *Lucia* v. *SEC*, 585 U. S. 237 (2018), that ALJs within the Securities and Exchange Commission (SEC) had been unconstitutionally appointed. Under the Appointments Clause, only the President, "Courts of Law," or "Heads of Departments" may appoint "Officers of the United States." Art. II, § 2, cl. 2; see *Lucia*, 585 U. S., at 244. The *Lucia* Court determined that SEC ALJs were "Officers" rather than mere employees because they held "a continuing office established by law," exercised " 'significant discretion' when carrying out . . . 'important functions,' " and often had the last word in SEC proceedings. *Id.*, at 247–248. Consequently, the appointment of SEC ALJs by SEC staff violated the Constitution. *Id.*, at 243, 251.

Like the SEC ALJs at issue in *Lucia*, SSA ALJs had been selected by lower level staff rather than appointed by the head of the agency. On July 16, 2018, a few weeks after *Lucia* was decided, the SSA's Acting Commissioner preemptively "address[ed] any Appointments Clause questions involving Social Security claims" by "ratif[ying] the appointments" of all SSA ALJs and "approv[ing] those appointments

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[1] The Social Security Act provides disability benefits under two programs, Title II and Title XVI. Some petitioners sought benefits under Title II only, some under Title XVI only, and some under both. The distinctions between the two programs are irrelevant for present purposes. For ease of reference, this opinion cites only to the regulations governing Title II, found at 20 CFR pt. 404 (2020).

as her own." 84 Fed. Reg. 9583 (2019). The following year, the SSA issued a ruling stating that the Appeals Council should, in response to timely requests for Appeals Council review, vacate preratification ALJ decisions and provide fresh review by a properly appointed adjudicator. *Ibid.* That remedy was only available, however, to claimants who had raised an Appointments Clause challenge in either their ALJ or Appeals Council proceedings. *Ibid.* Claimants who had not objected to the ALJs' appointments in their administrative proceedings would receive no relief. See *ibid.*

Petitioners fell into this latter category. By the time the SSA issued its ruling, their administrative proceedings had concluded, and they were seeking review of the SSA's decisions in federal court. Following *Lucia*, each petitioner asked the Federal District Court (or, in some cases, the Federal Magistrate Judge) for a new hearing before a constitutionally appointed ALJ. The Commissioner did not dispute that the ALJs who decided petitioners' cases were unconstitutionally appointed, but contended instead that petitioners had forfeited their Appointments Clause challenges by failing to raise them before the agency.

In three separate decisions (covering all six petitioners), the U. S. Courts of Appeals for the Eighth and Tenth Circuits adopted the Commissioner's forfeiture argument. In those Circuits' view, petitioners could not obtain judicial review of their Appointments Clause claims because they had not pressed those challenges in their administrative proceedings. 963 F. 3d 790, 793 (CA8 2020); 964 F. 3d 759, 763 (CA8 2020); *Carr* v. *Commissioner, SSA*, 961 F. 3d 1267, 1268 (CA10 2020). The Third, Fourth, and Sixth Circuits have all held the opposite. In those Circuits, claimants may challenge the constitutionality of an SSA ALJ's appointment for the first time in federal court. See *Cirko* v. *Commissioner of Social Security*, 948 F. 3d 148, 152 (CA3 2020); *Probst* v. *Saul*, 980 F. 3d 1015, 1020 (CA4 2020); *Ramsey* v. *Commissioner of Social Security*, 973 F. 3d 537, 546 (CA6 2020).

The Court granted certiorari to resolve this conflict. 592 U. S. 1087 (2020).

II

Administrative review schemes commonly require parties to give the agency an opportunity to address an issue before seeking judicial review of that question. The source of this requirement (known as issue exhaustion) varies by agency.[2] Typically, issue-exhaustion rules are creatures of statute or regulation. *Sims* v. *Apfel*, 530 U. S. 103, 107–108 (2000); see *United States* v. *L. A. Tucker Truck Lines, Inc.*, 344 U. S. 33, 36, n. 6 (1952) (collecting statutes). Where statutes and regulations are silent, however, courts decide whether to require issue exhaustion based on "an analogy to the rule that appellate courts will not consider arguments not raised before trial courts." *Sims*, 530 U. S., at 108–109. The Commissioner concedes that no statute or regulation obligated petitioners to raise their Appointments Clause challenges in administrative proceedings. See Brief for Respondent 12, 35, n. 2; Tr. of Oral Arg. 39. Instead, the Commissioner asks this Court to impose a judicially created issue-exhaustion requirement in these cases.

A

"[T]he desirability of a court imposing a requirement of issue exhaustion depends on the degree to which the analogy to normal adversarial litigation applies in a particular administrative proceeding." *Sims*, 530 U. S., at 109. In conducting this inquiry, courts must take care not to "reflexively 'assimilat[e] the relation of . . . administrative bodies and the courts to the relationship between lower and upper courts.' " *Id.*, at 110 (quoting *FCC* v. *Pottsville Broadcasting Co.*, 309

[2] Issue exhaustion should not be confused with exhaustion of administrative remedies. There is no dispute in these cases that petitioners exhausted their administrative remedies, meaning that they proceeded through each step of the SSA's administrative review scheme and received a "final decision" before seeking judicial review. See 42 U. S. C. § 405(g).

U. S. 134, 144 (1940)). Instead, "[t]he inquiry requires careful examination of 'the characteristics of the particular administrative procedure provided.'" 530 U. S., at 113 (O'Connor, J., concurring in part and concurring in judgment) (quoting *McCarthy* v. *Madigan*, 503 U. S. 140, 146 (1992)). The critical feature that distinguishes adversarial proceedings from inquisitorial ones is whether claimants bear the responsibility to develop issues for adjudicators' consideration.[3]

With respect to the nature of the SSA proceedings at issue here, our inquiry starts from the baseline set by *Sims* v. *Apfel*. There, this Court held that issues not raised before the Appeals Council (the final stage of administrative review within the SSA) are nonetheless preserved for judicial review. In so holding, the Court explained that "the rationale for requiring issue exhaustion is at its greatest" when "the parties are expected to develop the issues in an adversarial administrative proceeding," but "the reasons for a court to require issue exhaustion are much weaker" when "an administrative proceeding is not adversarial." 530 U. S., at 110.

The plurality went on to explain that "[t]he differences between courts and agencies are nowhere more pronounced

[3] The Commissioner invokes the "general rule," recognized in cases such as *L. A. Tucker Truck Lines*, that "orderly procedure and good administration require that objections to the proceedings of an administrative agency be made while it has opportunity for correction in order to raise issues reviewable by the courts." *United States* v. *L. A. Tucker Truck Lines, Inc.*, 344 U. S. 33, 37 (1952); see also *Hormel* v. *Helvering*, 312 U. S. 552, 557 (1941); *Unemployment Compensation Comm'n of Alaska* v. *Aragon*, 329 U. S. 143, 154–155 (1946). That general rule, however, originated in cases that "each involved an adversarial proceeding." *Sims* v. *Apfel*, 530 U. S. 103, 110 (2000). Where claimants are not expected to develop certain issues in ALJ proceedings, it is generally inappropriate to treat those issues as forfeited. See *id.*, at 109 ("[C]ourts require administrative issue exhaustion 'as a general rule' because it is usually 'appropriate under [an agency's] practice' for 'contestants in an adversary proceeding' before it to develop fully all issues there" (quoting *L. A. Tucker Truck Lines*, 344 U. S., at 36–37)).

than in Social Security proceedings," where administrative "proceedings are inquisitorial rather than adversarial." *Id.*, at 110–111. Regulations governing SSA proceedings "expressly provide that the SSA 'conduct[s] the administrative review process in an informal, nonadversary manner' " and assures claimants that the SSA " 'will consider at each step of the review process any information you present as well as all the information in our records.' " *Id.*, at 111 (quoting 20 CFR § 404.900(b) (1999)). At the Appeals Council level, "the Council's review is plenary unless it states otherwise." *Sims*, 530 U. S., at 111 (plurality opinion). Rather than appear "as a litigant opposing the claimant," the Commissioner serves "just as an adviser to the Council." *Ibid.* Claimants are not required to file a brief; indeed, the SSA's standard form "provides only three lines for [a claimant's] request for review." *Id.*, at 112. A notice "accompanying the form estimates that it will take only 10 minutes to 'read the instructions, gather the necessary facts and fill out the form.' " *Ibid.* Thus, in the context of Appeals Council review, the plurality observed that the "adversarial development of issues by the parties . . . on which [the judicial-proceedings] analogy depends simply does not exist." *Ibid.*

Justice O'Connor concurred in the judgment. In her view, "the agency's failure to notify claimants of an issue exhaustion requirement" provided a "sufficient basis" for refusing to impose one by judicial decree. *Id.*, at 113. "Requiring issue exhaustion is particularly inappropriate," she explained, "where the regulations and procedures of the [SSA] affirmatively suggest that specific issues need not be raised before the Appeals Council." *Ibid.*

Much of what the *Sims* opinions said about Appeals Council review applies equally to ALJ proceedings. The *Sims* plurality itself noted that "[i]t is the ALJ's duty to investigate the facts and develop the arguments both for and against granting benefits" and that "[t]he Commissioner has no representative before the ALJ to oppose the claim for benefits." *Id.*, at 111. The SSA regulations that ensure informal, nonadversarial proceedings and plenary review apply as much to ALJs as to the Appeals Council. See 20 CFR § 404.900(b). Regulations also provide that ALJs will "loo[k] fully into the issues" themselves, § 404.944, and may "raise a new issue" at "any time . . . before mailing notice of the hearing decision," § 404.946(b)(1). Like the form supplied by the SSA to request Appeals Council review, the form to request an ALJ hearing provides roughly three lines for claimants to explain their disagreement with the agency's determination, and the SSA "estimate[s]" that it will take just "10 minutes to read the instructions, gather the facts, and answer the questions" on that form. SSA, Request for Hearing by Administrative Law Judge, Form HA–501–U5. Last, as with the Appeals Council, SSA "regulations provide no notice that claimants must . . . raise specific issues before" the ALJ "to preserve them for review in federal court." *Sims*, 530 U. S., at 113 (opinion of O'Connor, J.).

B

The parallels between ALJ and Appeals Council proceedings are many, but the Commissioner correctly notes several differences that may make ALJ hearings relatively more adversarial. For one, ALJ hearings are typically available as a matter of right, while Appeals Council review is discretionary. Compare 20 CFR § 404.957 with § 404.967. Most claimants thus submit no more than a one-page request for review to the Appeals Council before having their request denied. Mandatory ALJ proceedings, by contrast, present far more opportunities for claimants to press issues, and the SSA consequently relies more heavily on those proceedings to "conduc[t the agency's] principal and most thorough investigation of . . . disability claim[s]." Brief for Respondent 35–36. Additionally, before every hearing, the SSA mails claimants a "notice of hearing" that includes logistical information and lists the "[t]he specific issues to be decided in [the] case."

§ 404.938(b)(1). Claimants must notify the ALJ in writing if they "object to the issues to be decided at the hearing."[4] § 404.939. Similarly, SSA conflict-of-interest regulations instruct claimants to "notify the [ALJ] at [the] earliest opportunity" if they "object to the [ALJ] who will conduct [their] hearing." § 404.940.

Even accepting that ALJ proceedings may be comparatively more adversarial than Appeals Council proceedings, the question nonetheless remains whether the ALJ proceedings at issue here were adversarial enough to support the "analogy to judicial proceedings" that undergirds judicially created issue-exhaustion requirements. *Sims*, 530 U. S., at 112 (plurality opinion). In the specific context of petitioners' Appointments Clause challenges, two additional considerations tip the scales decidedly against imposing an issue-exhaustion requirement.[5]

1

First, this Court has often observed that agency adjudications are generally ill suited to address structural constitutional challenges, which usually fall outside the adjudicators' areas of technical expertise. See, *e. g., Free Enterprise Fund* v. *Public Company Accounting Oversight Bd.*, 561 U. S. 477, 491 (2010); *Califano* v. *Sanders*, 430 U. S. 99, 109 (1977); *Weinberger* v. *Salfi*, 422 U. S. 749, 765 (1975). As such, it is sometimes appropriate for courts to entertain constitutional challenges to statutes or other agency-wide policies even when those challenges were not raised in administrative proceedings.[6] See, *e. g., Mathews* v. *Diaz*, 426 U. S.

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[4] As discussed above, see *supra*, at 88, the Commissioner "do[es] not argue that these regulations themselves impose a forfeiture rule that applies here." Brief for Respondent 35, n. 2.

[5] Outside the context of Appointments Clause challenges, such as in the sphere of routine objections to individual benefits determinations, the scales might tip differently.

[6] Contrary to the Commissioner's assertion, *Richardson* v. *Perales*, 402 U. S. 389 (1971), has no bearing on whether an issue-exhaustion requirement is appropriate in these cases. In *Perales*, the Court rejected a

67, 76–77 (1976). Thus, this Court observed in *Mathews* v. *Eldridge*, 424 U. S. 319 (1976), that, so long as a Social Security claimant "had exhausted the full set of available administrative review procedures" (as petitioners did here), "failure to have raised his constitutional claim would not bar him from asserting it later in a district court." *Id.*, at 329, n. 10.

Second, this Court has consistently recognized a futility exception to exhaustion requirements. See, *e. g.*, *Bethesda Hospital Assn.* v. *Bowen*, 485 U. S. 399, 405–406 (1988); *Montana Nat. Bank of Billings* v. *Yellowstone County*, 276 U. S. 499, 505 (1928). It makes little sense to require litigants to present claims to adjudicators who are powerless to grant the relief requested. Such a vain exercise will rarely "protec[t] administrative agency authority" or "promot[e] judicial efficiency." *McCarthy*, 503 U. S., at 145.

Both considerations apply fully here: Petitioners assert purely constitutional claims about which SSA ALJs have no special expertise and for which they can provide no relief. Relying on *L. A. Tucker Truck Lines*, the Commissioner argues that it nevertheless would have been fruitful for petitioners to raise Appointments Clause challenges in their ALJ hearings because " '[r]epetition of the objection' in multiple cases could have led 'to a change of policy.' " Brief for Respondent 45 (quoting *L. A. Tucker Truck Lines*, 344 U. S., at 37). But the Commissioner misses a key distinction: In *L. A. Tucker Truck Lines*, the aggrieved litigant had the opportunity to object to the relevant method of appointment before the full Interstate Commerce Commission itself. *Id.*, at 34. Repetition of such an objection in cases before the

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claimant's procedural due process challenge to the admissibility of an adverse medical report, explaining (among other reasons) that "[a]lthough the claimant complain[ed] of the lack of opportunity to cross-examine the reporting physicians, he did not take advantage of the opportunity" to subpoena the physicians. *Id.*, at 404. *Perales* thus stands for the uncontroversial (and irrelevant) proposition that a claimant is not denied due process if he declines to take advantage of the adequate procedures available to him.

full Commission might have persuaded it to change its "predetermined policy on th[e] subject." *Id.*, at 37. Here, by contrast, the SSA's administrative review scheme at no point afforded petitioners access to the Commissioner, the one person who could remedy their Appointments Clause challenges. Nor were the ALJs capable of remedying any defects in their own appointments. After all, there were no Commissioner-appointed ALJs to whom objecting claimants' cases could be transferred, and the ALJs could not very well have reappointed themselves.

Internal SSA guidance confirms as much. On January 30, 2018, soon after this Court granted certiorari in *Lucia*, the agency issued an "emergency message" to ALJs advising them that "adjudicators may see challenges . . . related to the constitutionality of the appointment of SSA's ALJs." SSA, EM–18003: Important Information Regarding Possible Challenges to the Appointment of Administrative Law Judges in SSA's Administrative Process, p. 2. The agency warned ALJs that, because the "SSA lacks the authority to finally decide constitutional issues such as these," they should "not discuss or make any findings related to the Appointments Clause issue on the record." *Ibid.* Instead, ALJs were directed to acknowledge any Appointments Clause objections with standardized language explaining that they " 'd[id] not have the authority to rule on that challenge.' " *Ibid.* The SSA reiterated these instructions in a second emergency message issued shortly after *Lucia* was decided.[7] See SSA, EM–18003 REV: Important

[7] Although the agency issued its internal guidance several months after petitioners' ALJ hearings concluded, there is no indication that the ALJs would or could have adjudicated an Appointments Clause challenge at any time. Moreover, as a practical matter, the agency's emergency messages belie the Commissioner's suggestion that the SSA would have changed course if only it had been " 'put on notice of the accumulating risk of wholesale reversals.' " Brief for Respondent 45 (quoting *L. A. Tucker Truck Lines*, 344 U. S., at 37).

Information Regarding Possible Challenges to the Appointment of Administrative Law Judges in SSA's Administrative Process—UPDATE, pp. 1–2 (June 25, 2018). It was not until March 2019 that the Acting Commissioner finally instructed the Appeals Council on how to handle preratification Appointments Clause challenges. See 84 Fed. Reg. 9582; *supra*, at 87.

2

Taking a somewhat different tack, the Commissioner contends that petitioners are not entitled to new hearings before constitutionally appointed ALJs because they failed to make "timely challenge[s]" to their adjudicators' appointments. *Ryder* v. *United States*, 515 U. S. 177, 182 (1995); *Lucia*, 585 U. S., at 251 (quoting *Ryder*). That argument, however, presumes what the Commissioner has failed to prove: that petitioners' challenges are, in fact, untimely. The Commissioner relies on *Ryder* and *Lucia*, but neither of those decisions had occasion to opine on what would constitute a "timely" objection in an administrative review scheme like the SSA's. *Ryder* involved an appeal from a Coast Guard court-martial, 515 U. S., at 179, an adversarial proceeding in which traditional forfeiture rules apply, see *United States* v. *Gladue*, 67 M. J. 311, 313 (C. A. Armed Forces 2009). *Lucia*, meanwhile, arose from proceedings before the Securities and Exchange Commission, 585 U. S., at 242, in which a statutory issue-exhaustion requirement applies, see 15 U. S. C. § 78y(c)(1). Where, as here, claimants are not required to exhaust certain issues in administrative proceedings to preserve them for judicial review, claimants who raise those issues for the first time in federal court are not untimely in doing so.

* * *

Taken together, the inquisitorial features of SSA ALJ proceedings, the constitutional character of petitioners' claims, and the unavailability of any remedy make clear that "adversarial development" of the Appointments Clause issue "simply [did] not exist" (and could not exist) in petitioners' ALJ proceedings. *Sims*, 530 U. S., at 112 (plurality opinion). The Courts of Appeals therefore erred in imposing an issue-exhaustion requirement on petitioners' Appointments Clause claims. The judgments of the Eighth and Tenth Circuits are reversed, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE GORSUCH and JUSTICE BARRETT join, concurring in part and concurring in the judgment.

I join Parts I, II–A, and II–B–2 of the opinion of the Court, which correctly explain that the nonadversarial nature of an agency proceeding generally gives good reason to refrain from creating an issue-exhaustion requirement. See *Sims* v. *Apfel*, 530 U. S. 103, 109–110 (2000). Proceedings before an administrative law judge (ALJ) of the Social Security Administration are plainly nonadversarial: The regulations assure claimants that the agency will "conduct the administrative review process in an informal, non-adversarial manner." 20 CFR § 404.900(b) (2020). ALJs can raise new issues *sua sponte*. §§ 404.944, 404.946. Hearings are so informal that lawyers, briefs, and even attendance are often optional. §§ 404.948–404.950. And should an ALJ err, the Appeals Council may review cases to correct anything from "error[s] of law" to "broad policy or procedural issue[s] that may affect the general public interest." § 404.970(a). This decidedly pro-claimant, inquisitorial process is quite unlike an adversarial suit in which parties are expected to identify, argue, and preserve all issues.

To be sure, a few regulatory provisions direct claimants to advocate on their own behalf by objecting to problems, including if the agency misidentifies issues before the hearing or if the ALJ is "prejudiced or partial." §§ 404.938–404.940.

But these unsurprising reminders that a claimant should not sit idly on the sidelines hardly demand that the penalty for overlooking an argument is forfeiture. On the contrary, such a permanent consequence would be surprising in light of the flexible, "informal" mechanisms that undergird the entire agency review process. § 404.900(b); see also *Sims*, 530 U. S., at 110 (plurality opinion) ("The differences between courts and agencies are nowhere more pronounced than in Social Security proceedings").

Because these proceedings bear little resemblance to adversarial litigation, I agree with the Court that there is no need for an exhaustion rule. I would end the analysis there.

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

I continue to believe that, "[u]nder ordinary principles of administrative law a reviewing court will not consider arguments that a party failed to raise in timely fashion before an administrative agency." *Sims* v. *Apfel*, 530 U. S. 103, 114 (2000) (BREYER, J., dissenting). I also adhere to my prior view that, in the particular context of the Social Security Administration, a claimant "ordinarily must raise all relevant issues before the ALJ" and that the "nonadversarial nature" of the agency's procedures is generally irrelevant to whether the ordinary rule requiring issue exhaustion ought to apply. *Id.*, at 117. Here, however, I agree with the Court that the Appointments Clause challenges at issue fall into the well-established exceptions for constitutional and futile claims. See *ante*, at 92–95; see also *Sims*, 530 U. S., at 115 (BREYER, J., dissenting); *Woodford* v. *Ngo*, 548 U. S. 81, 103 (2006) (BREYER, J., concurring in judgment); *Ross* v. *Blake*, 578 U. S. 632, 649 (2016) (BREYER, J., concurring in part) (recognizing these traditional exceptions). I therefore join Parts I, II–B–1, and II–B–2 of the Court's opinion and concur in the Court's judgment.

Syllabus

JONES *v.* MISSISSIPPI

CERTIORARI TO THE COURT OF APPEALS OF MISSISSIPPI

No. 18–1259. Argued November 3, 2020—Decided April 22, 2021

A Mississippi jury convicted petitioner Brett Jones of murder for killing his grandfather. Jones was 15 years old when he committed the crime. Under Mississippi law at the time, murder carried a mandatory sentence of life without parole. The trial judge duly imposed that sentence, which was affirmed on direct appeal. This Court subsequently decided *Miller* v. *Alabama*, 567 U. S. 460, which held that the Eighth Amendment permits a life-without-parole sentence for a defendant who committed a homicide when he or she was under 18, but only if the sentence is not mandatory and the sentencer therefore has discretion to impose a lesser punishment. In the wake of that decision, the Mississippi Supreme Court ordered that Jones be resentenced in accordance with *Miller*. At the resentencing, the sentencing judge acknowledged that he had discretion under *Miller* to impose a sentence less than life without parole. The judge determined, however, that life without parole remained the appropriate sentence for Jones. Jones again appealed his sentence, citing both *Miller* and the then-recently decided case of *Montgomery* v. *Louisiana*, 577 U. S. 190, which held that *Miller* applied retroactively on collateral review. Jones contended that, under *Miller* and *Montgomery*, a sentencer must make a separate factual finding that a murderer under 18 is permanently incorrigible before sentencing the offender to life without parole. The Mississippi Court of Appeals rejected Jones's argument.

Held: In the case of a defendant who committed a homicide when he or she was under 18, *Miller* and *Montgomery* do not require the sentencer to make a separate factual finding of permanent incorrigibility before sentencing the defendant to life without parole. In such a case, a discretionary sentencing system is both constitutionally necessary and constitutionally sufficient. Pp. 104–121.

(a) A sentencer need not make a separate factual finding of permanent incorrigibility before sentencing a murderer under 18 to life without parole. In *Miller*, the Court mandated "only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing" a life-without-parole sentence. 567 U. S., at 483. And in *Montgomery*, the Court stated that "a finding of fact regarding a child's incorrigibility . . . is not required." 577 U. S., at 211. *Miller* and *Montgomery* require consideration of an offender's youth but not any particular factual finding. *Miller* and *Montgomery* therefore refute Jones's argument that a finding of permanent incorrigibility is constitutionally necessary. Pp. 105–113.

(b) Nor must a sentencer provide an on-the-record sentencing explanation with an "implicit finding" of permanent incorrigibility before sentencing a murderer under 18 to life without parole. An on-the-record sentencing explanation is not necessary to ensure that a sentencer considers a defendant's youth. Nor is an on-the-record sentencing explanation required by or consistent with *Miller* or *Montgomery*, neither of which said anything about a sentencing explanation. Pp. 113–118.

(c) The Court's decision does not disturb *Miller*'s holding (that a State may not impose a mandatory life-without-parole sentence on a murderer under 18) or *Montgomery*'s holding (that *Miller* applies retroactively on collateral review). The resentencing in Jones's case complied with *Miller* and *Montgomery* because the sentencer had discretion to impose a sentence less than life without parole in light of Jones's youth. The Court's decision today should not be construed as agreement or disagreement with Jones's sentence. In addition, the Court's decision does not preclude the States from imposing additional sentencing limits in cases involving murderers under 18. Nor does the Court's decision prohibit Jones from presenting his moral and policy arguments against his life-without-parole sentence to the state officials who are authorized to act on those arguments. Pp. 118–121.

285 So. 3d 626, affirmed.

Kavanaugh, J., delivered the opinion of the Court, in which Roberts, C. J., Alito, Gorsuch, and Barrett, JJ., joined. Thomas, J., filed an opinion concurring in the judgment, *post*, p. 121. Sotomayor, J., filed a dissenting opinion, in which Breyer and Kagan, JJ., joined, *post*, p. 129.

David M. Shapiro argued the cause for petitioner. With him on the briefs were *Amir H. Ali*, *Devi Rao*, *Jacob Howard*, and *Jeffrey T. Green*.

Krissy C. Nobile, Deputy Solicitor General of Mississippi, argued the cause for respondent. With her on the brief were *Lynn Fitch*, Attorney General of Mississippi, *Kristi H. Johnson*, Solicitor General, *Justin L. Matheny*, Assistant Solicitor General, and *Scott Stuart*, Special Assistant Attorney General.

Frederick Liu argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Acting Solicitor General Wall*, *Acting Assistant Attorney General Rabbitt*, *Deputy Solicitor General Feigin*, and *Robert A. Parker.**

JUSTICE KAVANAUGH delivered the opinion of the Court.

Under *Miller* v. *Alabama*, 567 U. S. 460 (2012), an individual who commits a homicide when he or she is under 18 may be sentenced to life without parole, but only if the sentence is not mandatory and the sentencer therefore has discretion to impose a lesser punishment. In this case, a Mississippi

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*Briefs of *amici curiae* urging reversal were filed for the American Bar Association by *Judy Perry Martinez*, *Christopher M. Murphy*, *Lawrence A. Wojcik*, and *Ethan H. Townsend*; for Current and Former Prosecutors et al. by *Mary B. McCord*, *Amy L. Marshak*, and *Annie L. Owens*; for the Juvenile Law Center et al. by *Nicole A. Saharsky*, *Kristen Clarke*, *Jon Greenbaum*, *Arthur Ago*, *Noah Baron*, *Marsha L. Levick*, *Riya Saha Shah*, *Sherrilyn A. Ifill*, *Janai S. Nelson*, *Samuel Spital*, *Jin Hee Lee*, and *Mahogane D. Reed*; for the National Association of Criminal Defense Lawyers et al. by *Ginger D. Anders*, *Barbara E. Bergman*, and *André de Gruy*; and for Erwin Chemerinsky et al. by *Harry Sandick* and *John Mills*. A brief of *amici curiae* urging vacatur was filed for the American Civil Liberties Union Foundation et al. by *David D. Cole*, *Jennesa Calvo-Friedman*, *Larry W. Yackle*, *David H. Safavian*, *John W. Whitehead*, and *Arthur Rizer*.

Briefs of *amici curiae* urging affirmance were filed for the State of Indiana et al. 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 for their respective States as follows: *Steve Marshall* of Alabama, *Leslie Rutledge* of Arkansas, *Ashley Moody* of Florida, *Lawrence G. Wasden* of Idaho, *Daniel Cameron* of Kentucky, *Eric Schmitt* of Missouri, *Timothy C. Fox* of Montana, *Doug Peterson* of Nebraska, *David A. Yost* of Ohio, *Mike Hunter* of Oklahoma, *Alan Wilson* of South Carolina, *Jason R. Ravnsborg* of South Dakota, *Herbert H. Slatery III* of Tennessee, *Ken Paxton* of Texas, and *Bridget Hill* of Wyoming; for the Criminal Justice Legal Foundation by *Kent S. Scheidegger* and *Kymberlee C. Stapleton*; and for the National Organization of Victims of Juvenile Murderers et al. by *Kent S. Scheidegger* and *Kymberlee C. Stapleton*.

Briefs of *amici curiae* were filed for Amicus Populi by *Mitchell Keiter*; for Madge Jones et al. by *Angela C. Vigil*; and for Jonathan F. Mitchell et al. by *Taylor A. R. Meehan*.

trial judge acknowledged his sentencing discretion under *Miller* and then sentenced petitioner Brett Jones to life without parole for a murder that Jones committed when he was under 18. The Mississippi Court of Appeals affirmed, concluding that the discretionary sentencing procedure satisfied *Miller*.

Jones argues, however, that a sentencer's discretion to impose a sentence less than life without parole does not alone satisfy *Miller*. Jones contends that a sentencer who imposes a life-without-parole sentence must *also* make a separate factual finding that the defendant is permanently incorrigible, or at least provide an on-the-record sentencing explanation with an implicit finding that the defendant is permanently incorrigible. And Jones says that the trial judge did not make such a finding in his case.

Jones's argument that the sentencer must make a finding of permanent incorrigibility is inconsistent with the Court's precedents. In *Miller*, the Court mandated "only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing" a life-without-parole sentence. *Id.*, at 483. And in *Montgomery* v. *Louisiana*, which held that *Miller* applies retroactively on collateral review, the Court flatly stated that "*Miller* did not impose a formal factfinding requirement" and added that "a finding of fact regarding a child's incorrigibility . . . is not required." 577 U. S. 190, 211 (2016). In light of that explicit language in the Court's prior decisions, we must reject Jones's argument. We affirm the judgment of the Mississippi Court of Appeals.

I

A

In August 2004, Brett Jones was living with his grandparents, Bertis and Madge, in Shannon, Mississippi. Shannon is a small town of about 2,000 in northern Mississippi near Tupelo, about halfway between Memphis and Birmingham off I–22.

At the time, Jones was only 15 years old. On the morning of August 9, 2004, Bertis discovered Jones's girlfriend, Michelle Austin, in Jones's bedroom. Bertis and Jones got into an argument, and Bertis ordered Austin out of the house. A few hours later, Jones told Austin that he " 'was going to hurt' " his grandfather. 938 So. 2d 312, 314 (Miss. App. 2006).

That afternoon, Jones was in the kitchen making himself something to eat. Jones and Bertis began arguing again. The clash escalated from shouts to shoves to punches. Jones then stabbed his grandfather with a kitchen knife. When that knife broke, Jones picked up a second knife and continued stabbing Bertis. In total, Jones stabbed his grandfather eight times.

Bleeding profusely, Bertis staggered outside, fell to the ground, and died. Jones did not call 911. Instead, he haphazardly attempted to cover up his role in the murder. He dragged Bertis's body back inside. Jones then washed the blood off his arms with a water hose, changed out of his bloody shirt, and moved Bertis's car over some blood stains on the carport floor.

While Jones was outside, he was seen by a neighbor. The neighbor called the police. Shortly thereafter, another neighbor saw Jones and Austin leaving the house together on foot. Later that night, police located Jones and Austin at a gas station several miles away. When questioned, Jones and Austin provided fake names to the officer. After a police pat down revealed a knife in Jones's pocket, the officer asked Jones whether it was the knife that he " 'did it with.' " *Id.*, at 315. Jones responded, " 'No, I already got rid of it.' " *Ibid.*

B

Jones was charged with murder. The trial judge instructed the jury on murder and the lesser included offense of manslaughter. Jones claimed that he was not guilty because he acted in self-defense. The jury rejected that defense and found Jones guilty of murder.

Under Mississippi law at the time, murder carried a *mandatory* sentence of life without parole. Miss. Code Ann. § 97–3–21 (2000), § 47–7–3(g) (2004); see *Parker* v. *State*, 119 So. 3d 987, 996–997 (Miss. 2013). The trial judge therefore imposed that sentence. In 2006, the Mississippi Court of Appeals affirmed. See 938 So. 2d 312.

Jones later moved for post-conviction relief in state court, asserting among other things that his mandatory life-without-parole sentence violated the Cruel and Unusual Punishments Clause of the Eighth Amendment. The trial court denied the motion, and the Mississippi Court of Appeals affirmed. See 122 So. 3d 725 (2011).

In 2012, while the Mississippi Supreme Court was considering whether to review Jones's case, this Court decided *Miller* v. *Alabama*, 567 U. S. 460. *Miller* held that the Cruel and Unusual Punishments Clause of the Eighth Amendment prohibits *mandatory* life-without-parole sentences for murderers under 18, but the Court allowed *discretionary* life-without-parole sentences for those offenders.

In the wake of *Miller*, the Mississippi Supreme Court concluded that *Miller* applied retroactively on state collateral review. In Jones's case, the State Supreme Court ordered a new sentencing hearing where the sentencing judge could consider Jones's youth and exercise discretion in selecting an appropriate sentence. See 122 So. 3d 698 (2013).

At the resentencing, Jones's attorney argued that Jones's "chronological age and its hallmark features" diminished the "penological justifications for imposing the harshest sentences." App. 25, 27 (quoting *Miller*, 567 U. S., at 472, 477; emphasis deleted). Jones's attorney added that "nothing in this record . . . would support a finding that the offense reflects irreparable corruption." App. 143–144.

At the end of the hearing, the sentencing judge acknowledged that he had discretion under *Miller* to impose a sentence less than life without parole. But after considering the factors "relevant to the child's culpability," App. 149, the judge determined that life without parole remained the appropriate sentence for Jones, *id.*, at 152.

Jones appealed his sentence to the Mississippi Court of Appeals, citing both *Miller* and the then-recently decided case of *Montgomery* v. *Louisiana*, 577 U. S. 190 (2016), which in the interim had held that *Miller* applied retroactively on collateral review. According to Jones, in order to impose a life-without-parole sentence on a defendant who committed a murder when he or she was under 18, the sentencer must make a separate factual finding that the defendant is permanently incorrigible. The Mississippi Court of Appeals rejected Jones's argument, relying on this Court's express statement in *Montgomery* that " '*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility.' " 285 So. 3d 626, 632 (2017) (quoting *Montgomery*, 577 U. S., at 211).

In light of disagreement in state and federal courts about how to interpret *Miller* and *Montgomery*, we granted certiorari. 589 U. S. 1263 (2020). Compare, *e. g.*, *Malvo* v. *Mathena*, 893 F. 3d 265 (CA4 2018), *Commonwealth* v. *Batts*, 640 Pa. 401, 163 A. 3d 410 (2017), and *Veal* v. *State*, 298 Ga. 691, 784 S. E. 2d 403 (2016), with, *e. g.*, *United States* v. *Sparks*, 941 F. 3d 748 (CA5 2019), *People* v. *Skinner*, 502 Mich. 89, 917 N. W. 2d 292 (2018), and *State* v. *Ramos*, 187 Wash. 2d 420, 387 P. 3d 650 (2017).

II

According to Jones, a sentencer's discretion to impose a sentence less than life without parole does not alone satisfy *Miller*. In Jones's view, a sentencer who imposes a life-without-parole sentence must *also* either (i) make a separate factual finding of permanent incorrigibility, or (ii) at least provide an on-the-record sentencing explanation with an "implicit finding" of permanent incorrigibility. Tr. of Oral Arg. 32; see *id.*, at 6, 14.

As we will explain, the Court has already ruled that a separate factual finding of permanent incorrigibility is not required. In *Montgomery*, the Court unequivocally stated that "*Miller* did not impose a formal factfinding requirement" and added that "a finding of fact regarding a child's incorrigibility . . . is not required." 577 U. S., at 211. In a case involving an individual who was under 18 when he or she committed a homicide, a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient.[1]

A

In 2004, the year that Jones murdered his grandfather, about 16,000 individuals committed a homicide in the United States. See Dept. of Justice, Federal Bureau of Investigation, Crime in the United States 2004, Murder Offenders by Age, Sex, and Race 17 (Table 2.5). About 850 of the individuals who committed a homicide were known to be under 18—meaning that, on average, more than two homicides were committed every day by individuals under 18. *Ibid.*

The States authorize strict punishments for homicide, including for homicides committed by individuals under 18. But this Court has held that sentencing an offender who was under 18 at the time of the crime raises special constitutional considerations.

Ratified in 1791, the Eighth Amendment provides that "cruel and unusual punishments" shall not be "inflicted." Ratified in 1868, the Fourteenth Amendment incorporates the Cruel and Unusual Punishments Clause against the States.

In a series of Eighth Amendment cases applying the Cruel and Unusual Punishments Clause, this Court has stated that youth matters in sentencing. In *Roper* v. *Simmons*, 543

[1] Both *Miller* and *Montgomery* generated vigorous dissents. The dissents in *Miller* stated that the Eighth Amendment does not prohibit mandatory life-without-parole sentences and asserted that the Court's decision contravened this Court's precedents. See 567 U. S., at 493–502 (ROBERTS, C. J., dissenting); *id.*, at 502–509 (THOMAS, J., dissenting); *id.*, at 509–515 (ALITO, J., dissenting). The lead dissent in *Montgomery* argued that *Miller* should not apply retroactively on collateral review. 577 U. S., at 224–227 (Scalia, J., dissenting).

U. S. 551 (2005), the Court concluded that the Eighth Amendment prohibits capital punishment for murderers who were under 18 at the time of their crimes. And in *Graham* v. *Florida*, 560 U. S. 48 (2010), the Court held that the Eighth Amendment prohibits life without parole for offenders who were under 18 and committed *nonhomicide* offenses. Importantly, however, *Graham* did not prohibit life without parole for offenders who were under 18 and committed *homicide*. The *Graham* Court stated: "There is a line between homicide and other serious violent offenses against the individual." *Id.*, at 69 (internal quotation marks omitted).

And then in *Miller* in 2012, the Court allowed life-without-parole sentences for defendants who committed *homicide* when they were under 18, but only so long as the sentence is not mandatory—that is, only so long as the sentencer has discretion to "consider the mitigating qualities of youth" and impose a lesser punishment. 567 U. S., at 476 (internal quotation marks omitted). Four years later, *Montgomery* held that *Miller* applied retroactively to cases on collateral review. 577 U. S., at 206, 212.

Jones argues that *Miller* requires more than just a discretionary sentencing procedure. According to Jones, the sentencer must also make a separate factual finding of permanent incorrigibility before sentencing a murderer under 18 to life without parole.

The problem for Jones is that *Miller* and *Montgomery* squarely rejected such a requirement. *Miller* mandated "only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing" a life-without-parole sentence. 567 U. S., at 483. *Montgomery* then flatly stated that "*Miller* did not impose a formal factfinding requirement" and that "a finding of fact regarding a child's incorrigibility . . . is not required." 577 U. S., at 211.[2]

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[2] The key paragraph from *Montgomery* is as follows:

"Louisiana suggests that *Miller* cannot have made a constitutional distinction between children whose crimes reflect transient immaturity and

Notwithstanding that clear language in *Miller* and *Montgomery,* Jones advances three distinct arguments for why this Court should require a sentencer to make a finding of permanent incorrigibility before sentencing a murderer under 18 to life without parole.

First, Jones analogizes to cases where the Court has recognized certain eligibility criteria, such as sanity or a lack of intellectual disability, that must be met before an offender can be sentenced to death. See *Ford* v. *Wainwright*, 477 U. S. 399 (1986); *Atkins* v. *Virginia*, 536 U. S. 304 (2002). Jones argues that the Constitution similarly requires a sentencer to find permanent incorrigibility before sentencing a murderer under 18 to life without parole.

The State responds that permanent incorrigibility is not an eligibility criterion akin to sanity or a lack of intellectual disability. We agree with the State. For one thing, the Court has recognized that it "is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Roper*, 543 U. S., at 573. In addition, when the Court has established such an eligibility criterion,

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those whose crimes reflect irreparable corruption because *Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility. That this finding is not required, however, speaks only to the degree of procedure *Miller* mandated in order to implement its substantive guarantee. When a new substantive rule of constitutional law is established, this Court is careful to limit the scope of any attendant procedural requirement to avoid intruding more than necessary upon the States' sovereign administration of their criminal justice systems. See *Ford* v. *Wainwright*, 477 U. S. 399, 416–417 (1986) ('[W]e leave to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences'). Fidelity to this important principle of federalism, however, should not be construed to demean the substantive character of the federal right at issue. That *Miller* did not impose a formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment." 577 U. S., at 211.

the Court has considered whether " 'objective indicia of society's standards, as expressed in legislative enactments and state practice,' " demonstrated a "national consensus" in favor of the criterion. *Graham*, 560 U. S., at 61 (quoting *Roper*, 543 U. S., at 563). But *Miller* did not identify a single State that, as of that time, made permanent incorrigibility an eligibility criterion for life-without-parole sentences imposed on murderers under 18.

Given those two points, it comes as no surprise that *Miller* declined to characterize permanent incorrigibility as such an eligibility criterion. Rather, *Miller* repeatedly described youth as a sentencing factor akin to a mitigating circumstance. And *Miller* in turn required a sentencing procedure similar to the procedure that this Court has required for the individualized consideration of mitigating circumstances in capital cases such as *Woodson* v. *North Carolina*, 428 U. S. 280, 303–305 (1976) (plurality opinion), *Lockett* v. *Ohio*, 438 U. S. 586, 597–609 (1978) (plurality opinion), and *Eddings* v. *Oklahoma*, 455 U. S. 104, 113–115 (1982). Those capital cases require sentencers to consider relevant mitigating circumstances when deciding whether to impose the death penalty. And those cases afford sentencers wide discretion in determining "the weight to be given relevant mitigating evidence." *Id.*, at 114–115. But those cases do not require the sentencer to make any particular factual finding regarding those mitigating circumstances.

Repeatedly citing *Woodson*, *Lockett*, and *Eddings*, the *Miller* Court stated that "a judge or jury must have the opportunity to consider" the defendant's youth and must have "discretion to impose a different punishment" than life without parole. 567 U. S., at 489; *id.*, at 465; see *id.*, at 470, 476, 483. Stated otherwise, the *Miller* Court mandated "only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing" a life-without-parole sentence. *Id.*, at 483. In that process, the sentencer will consider the murderer's "diminished culpability and heightened capacity for change." *Id.*, at 479. That sentencing procedure ensures that the sentencer affords individualized "consideration" to, among other things, the defendant's "chronological age and its hallmark features." *Id.*, at 477.

To be sure, *Miller* also cited *Roper* and *Graham*. 567 U. S., at 471–475. *Roper* barred capital punishment for offenders under 18. And *Graham* barred life without parole for offenders under 18 who committed non-homicide offenses. But *Miller* did not cite those cases to require a finding of permanent incorrigibility or to impose a categorical bar against life without parole for murderers under 18. We know that because *Miller* said so: "Our decision does not categorically bar a penalty for a class of offenders or type of crime—as, for example, we did in *Roper* or *Graham*." 567 U. S., at 483. Instead, *Miller* cited *Roper* and *Graham* for a simple proposition: Youth matters in sentencing. And because youth matters, *Miller* held that a sentencer must have discretion to consider youth before imposing a life-without-parole sentence, just as a capital sentencer must have discretion to consider other mitigating factors before imposing a death sentence.

In short, *Miller* followed the Court's many death penalty cases and required that a sentencer consider youth as a mitigating factor when deciding whether to impose a life-without-parole sentence. *Miller* did not require the sentencer to make a separate finding of permanent incorrigibility before imposing such a sentence. And *Montgomery* did not purport to add to *Miller*'s requirements.[3]

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[3] If permanent incorrigibility were a factual prerequisite to a life-without-parole sentence, this Court's Sixth Amendment precedents might require that a jury, not a judge, make such a finding. See *Ring* v. *Arizona*, 536 U. S. 584 (2002); *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). If we were to rule for Jones here, the next wave of litigation would likely concern the scope of the jury right. The fact that neither *Miller* nor *Montgomery* even mentioned the Sixth Amendment is further reason to

Second, Jones contends that the *Montgomery* Court must nonetheless have assumed that a separate factual finding of permanent incorrigibility was necessary because *Montgomery* deemed *Miller* a substantive holding for purposes of applying *Miller* retroactively on collateral review. See *Teague* v. *Lane*, 489 U. S. 288, 310–311 (1989) (plurality opinion).

In advancing that argument, Jones relies on language in *Montgomery* that described *Miller* as permitting life-without-parole sentences only for "those whose crimes reflect permanent incorrigibility," rather than "transient immaturity." 577 U. S., at 209. In other words, because the *Montgomery* Court deemed *Miller* to be a substantive holding, and because *Montgomery* said that life without parole would be reserved for the permanently incorrigible, Jones argues that the *Montgomery* Court must have envisioned a separate factual finding of permanent incorrigibility, not just a discretionary sentencing procedure where youth would be considered.

That is an incorrect interpretation of *Miller* and *Montgomery*. We know as much because *Montgomery* said as much. To reiterate, the *Montgomery* Court explicitly stated that "a finding of fact regarding a child's incorrigibility . . . is not required." 577 U. S., at 211.

To break it down further: *Miller* required a discretionary sentencing procedure. The Court stated that a mandatory life-without-parole sentence for an offender under 18 "poses too great a risk of disproportionate punishment." 567 U. S., at 479. Despite the procedural function of *Miller*'s rule, *Montgomery* held that the *Miller* rule was substantive for retroactivity purposes and therefore applied retroactively on collateral review. 577 U. S., at 206, 212.[4] But in making

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doubt that those cases implicitly required a finding of permanent incorrigibility by the sentencer.

[4] As the Court has stated in cases both before and after *Montgomery*, the Court determines whether a rule is substantive or procedural for retroactivity purposes "by considering the function of the rule" itself—not

the rule retroactive, the *Montgomery* Court unsurprisingly declined to impose new requirements not already imposed by *Miller*. As *Montgomery* itself explained, the Court granted certiorari in that case not to consider whether the rule announced in *Miller* should be expanded, but rather simply to decide whether *Miller*'s "holding is retroactive to juvenile offenders whose convictions and sentences were final when *Miller* was decided." 577 U. S., at 194. On the question of what *Miller* required, *Montgomery* was clear: "A hearing where youth and its attendant characteristics are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not." *Id.*, at 210 (internal quotation marks omitted). But a separate finding of permanent incorrigibility "is not required." *Id.*, at 211.

The key assumption of both *Miller* and *Montgomery* was that discretionary sentencing allows the sentencer to consider the defendant's youth, and thereby helps ensure that life-without-parole sentences are imposed only in cases

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"by asking whether the constitutional right underlying the new rule is substantive or procedural." *Welch* v. *United States*, 578 U. S. 120, 130–131 (2016). For purposes of *Teague* v. *Lane*, 489 U. S. 288 (1989), a rule is procedural if it regulates " 'only the manner of determining the defendant's culpability.' " *Welch*, 578 U. S., at 129 (quoting *Schriro* v. *Summerlin*, 542 U. S. 348, 353 (2004); emphasis deleted). A rule is substantive and applies retroactively on collateral review, by contrast, if it " 'alters the range of conduct or the class of persons that the law punishes.' " *Welch*, 578 U. S., at 129 (quoting *Summerlin*, 542 U. S., at 353). As the Court's post-*Montgomery* decision in *Welch* already indicates, to the extent that *Montgomery*'s application of the *Teague* standard is in tension with the Court's retroactivity precedents that both pre-date and post-date *Montgomery*, those retroactivity precedents—and not *Montgomery*—must guide the determination of whether rules other than *Miller* are substantive. See *Welch*, 578 U. S. 120; *Summerlin*, 542 U. S. 348; *Lambrix* v. *Singletary*, 520 U. S. 518 (1997); *Saffle* v. *Parks*, 494 U. S. 484 (1990). To be clear, however, our decision today does not disturb *Montgomery*'s holding that *Miller* applies retroactively on collateral review. By now, most offenders who could seek collateral review as a result of *Montgomery* have done so and, if eligible, have received new discretionary sentences under *Miller*.

where that sentence is appropriate in light of the defendant's age. If the *Miller* or *Montgomery* Court wanted to require sentencers to also make a factual finding of permanent incorrigibility, the Court easily could have said so—and surely would have said so. But the Court did not say that, or anything like it. On the contrary, the *Montgomery* Court declared just the opposite: that the sentencer *need not* make such a separate factual finding of permanent incorrigibility.

In short, Jones's *Montgomery*-based argument for requiring a finding of permanent incorrigibility is unavailing because *Montgomery* explicitly stated that "*Miller* did not impose a formal factfinding requirement" and that "a finding of fact regarding a child's incorrigibility . . . is not required." *Montgomery*, 577 U. S., at 211.

Third, Jones relatedly argues that *Miller* and *Montgomery* sought to ensure that life without parole for murderers under 18 would be relatively rare. According to Jones, a separate factual finding of permanent incorrigibility is necessary to achieve that goal.

But in *Miller*, the Court stated that a discretionary sentencing procedure—where the sentencer can consider the defendant's youth and has discretion to impose a lesser sentence than life without parole—would itself help make life-without-parole sentences "relatively rar[e]" for murderers under 18. 567 U. S., at 484, n. 10.

Importantly, in concluding that a discretionary sentencing procedure would help make life-without-parole sentences relatively rare, the Court relied on data, not speculation. The Court pointed to statistics from 15 States that used discretionary sentencing regimes to show that, "when given the choice, sentencers impose life without parole on children relatively rarely." *Ibid.*[5] In light of those statistics, the

[5] See Cal. Penal Code Ann. § 190.5 (West 2014); Ga. Code Ann. § 16–5–1 (2011), § 17–10–31 (2013); Ind. Code § 35–50–2–3 (2009); Me. Rev. Stat. Ann., Tit. 17–A, § 1251 (2006); Md. Crim. Law Code Ann. §§ 2–201 to 2–

Court reasoned that a discretionary sentencing procedure would make life-without-parole sentences relatively rare for juvenile offenders. But the Court did not suggest that the States with discretionary sentencing regimes also required a separate factual finding of permanent incorrigibility, or that such a finding was necessary to make life-without-parole sentences for juvenile offenders relatively rare. Therefore, to remain true to *Miller*'s reasoning, we cannot now require a separate factual finding of permanent incorrigibility. (Moreover, to reiterate, *Montgomery* explicitly stated that such a finding is *not* required.)

In sum, the Court has unequivocally stated that a separate factual finding of permanent incorrigibility is not required before a sentencer imposes a life-without-parole sentence on a murderer under 18. To borrow the apt words of the Michigan Supreme Court: "Given that *Montgomery* expressly held that '*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility,' we likewise hold that *Miller* does not require trial courts to make a finding of fact regarding a child's incorrigibility." *People* v. *Skinner*, 502 Mich. 89, 122, 917 N. W. 2d 292, 309 (2018) (citation omitted).

B

Even if a separate factual finding of permanent incorrigibility is not required, Jones alternatively contends that a sentencer must at least provide an on-the-record sentencing explanation with an "implicit finding" of permanent incorrigibility. Tr. of Oral Arg. 32; see *id.*, at 6, 14. Jones

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203, 2–304 (2012); Nev. Rev. Stat. § 200.030 (2012); N. M. Stat. Ann. §§ 31–18–13, 31–18–14, 31–18–15.2 (2010); N. D. Cent. Code Ann. §§ 12.1–32–01, 12.1–32–09.1 (2012); Okla. Stat., Tit. 21, §§ 13.1, 701.9 (2011); R. I. Gen. Laws § 11–23–2 (2002); S. C. Code Ann. § 16–3–20 (2015); Tenn. Code Ann. §§ 39–13–202, 39–13–204, 39–13–207 (2018); Utah Code §§ 76–3–206, 76–3–207 (2012); W. Va. Code Ann. § 62–3–15 (Lexis 2014); Wis. Stat. § 939.50 (2005), § 973.014 (2007).

argues that such an explanation is necessary to ensure that the sentencer actually considers the defendant's youth. And Jones further asserts that the sentencing judge did not provide such an explanation at his resentencing.

We reject Jones's alternative argument because an on-the-record sentencing explanation with an implicit finding of permanent incorrigibility (i) is not necessary to ensure that a sentencer considers a defendant's youth, (ii) is not required by or consistent with *Miller*, (iii) is not required by or consistent with this Court's analogous death penalty precedents, and (iv) is not dictated by any consistent historical or contemporary sentencing practice in the States.

First, and most fundamentally, an on-the-record sentencing explanation is not necessary to ensure that a sentencer considers a defendant's youth. Jones's argument to the contrary rests on the assumption that meaningful daylight exists between (i) a sentencer's discretion to consider youth, and (ii) the sentencer's actual consideration of youth. But if the sentencer has discretion to consider the defendant's youth, the sentencer necessarily *will* consider the defendant's youth, especially if defense counsel advances an argument based on the defendant's youth. Faced with a convicted murderer who was under 18 at the time of the offense and with defense arguments focused on the defendant's youth, it would be all but impossible for a sentencer to avoid considering that mitigating factor.[6]

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[6] If defense counsel fails to make the sentencer aware of the defendant's youth, it is theoretically conceivable (albeit still exceedingly unlikely in the real world) that the sentencer might somehow not be aware of the defendant's youth. But in that highly unlikely scenario, the defendant may have a potential ineffective-assistance-of-counsel claim, not a *Miller* claim—just as defense counsel's failure to raise relevant mitigating circumstances in a death penalty sentencing proceeding can constitute a potential ineffective-assistance-of-counsel problem, not a *Woodson*/*Lockett*/*Eddings* violation. Cf. *Wiggins* v. *Smith*, 539 U. S. 510, 533–538 (2003) (counsel in capital case was ineffective for failing to investigate and present mitigat-

It is true that one sentencer may weigh the defendant's youth differently than another sentencer or an appellate court would, given the mix of all the facts and circumstances in a specific case. Some sentencers may decide that a defendant's youth supports a sentence less than life without parole. Other sentencers presented with the same facts might decide that life without parole remains appropriate despite the defendant's youth. But the key point remains that, in a case involving a murderer under 18, a sentencer cannot avoid considering the defendant's youth if the sentencer has discretion to consider that mitigating factor.[7]

Second, turning to precedent, an on-the-record sentencing explanation with an implicit finding of permanent incorrigibility is not required by or consistent with *Miller*. The Court's thorough opinion in *Miller* did not even hint at requiring an on-the-record sentencing explanation with an implicit finding of permanent incorrigibility. *Miller* highlighted 15 existing discretionary state sentencing systems as examples of what was missing in the mandatory Alabama regime before the Court in that case. 567 U. S., at 484, n. 10. As the Court explained, those discretionary sentencing regimes ensured individualized consideration of youth.

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ing evidence at sentencing); *Williams* v. *Taylor*, 529 U. S. 362, 395–398 (2000) (same).

[7] This Court's death penalty cases recognize a potential Eighth Amendment claim if the sentencer expressly refuses *as a matter of law* to consider relevant mitigating circumstances. See *Eddings* v. *Oklahoma*, 455 U. S. 104, 114–115 (1982). By analogy here, if a sentencer considering life without parole for a murderer who was under 18 expressly refuses as a matter of law to consider the defendant's youth (as opposed to, for example, deeming the defendant's youth to be outweighed by other factors or deeming the defendant's youth to be an insufficient reason to support a lesser sentence under the facts of the case), then the defendant might be able to raise an Eighth Amendment claim under the Court's precedents. In any event, we need not explore that possibility because the record here does not reflect that the sentencing judge refused as a matter of law to consider Jones's youth.

But the Court did not suggest that those discretionary sentencing regimes required some kind of sentencing explanation. Again, if the *Miller* Court believed that a sentencing explanation with an implicit finding of permanent incorrigibility was constitutionally necessary, the Court easily could have and surely would have said so. But *Miller* did not say a word about requiring some kind of particular sentencing explanation with an implicit finding of permanent incorrigibility, as *Montgomery* later confirmed.

Third, and just as telling, an on-the-record sentencing explanation with an implicit finding of permanent incorrigibility is not required by or consistent with this Court's death penalty cases. Those cases demonstrate that an on-the-record sentencing explanation is not necessary to ensure that the sentencer considers relevant mitigating circumstances.

In a series of capital cases over the past 45 years, the Court has required the sentencer to consider mitigating circumstances when deciding whether to impose the death penalty. See *Woodson*, 428 U. S., at 303–305 (plurality opinion); *Lockett*, 438 U. S., at 597–609 (plurality opinion); *Eddings*, 455 U. S., at 113–115; see also *Tennard* v. *Dretke*, 542 U. S. 274, 285 (2004); *Penry* v. *Lynaugh*, 492 U. S. 302, 318–319 (1989).

But the Court has *never* required an on-the-record sentencing explanation or an implicit finding regarding those mitigating circumstances. The reason is evident: Under the discretionary death penalty sentencing procedure required by cases such as *Woodson*, *Lockett*, and *Eddings*, the sentencer will necessarily consider relevant mitigating circumstances. A sentencing explanation is not necessary to ensure that the sentencer in death penalty cases considers the relevant mitigating circumstances. It follows that a sentencing explanation is likewise not necessary to ensure that the sentencer in juvenile life-without-parole cases considers the defendant's youth.

Because the Constitution does not require an on-the-record explanation of mitigating circumstances by the sentencer in *death penalty cases*, it would be incongruous to require an on-the-record explanation of the mitigating circumstance of youth by the sentencer in *life-without-parole cases*. Jones offers no persuasive answer for that incongruity in his argument.

Fourth, an on-the-record sentencing explanation with an implicit finding of permanent incorrigibility is not dictated by any historical or contemporary sentencing practice in the States. To be sure, when a state judge imposes a sentence of imprisonment, particularly a lengthy sentence, the judge often will explain both the sentence and the judge's evaluation of any mitigating circumstances. But many States traditionally have not legally required (and some States still do not legally require) on-the-record explanations by the sentencer. See, *e. g.*, A. Campbell, Law of Sentencing § 10:5, pp. 473–480 (3d ed. 2004) (hereinafter Campbell). Indeed, in some States, the jury is the sentencer for certain kinds of crimes, and juries typically do not supply sentencing explanations. See generally King & Noble, Felony Jury Sentencing in Practice: A Three-State Study, 57 Vand. L. Rev. 885 (2004). Even when state law requires a sentencer to supply reasons, many States do not impose a formulaic checklist of topics or a magic-words requirement with respect to particular mitigating circumstances. And appellate courts do not necessarily reverse merely because the sentencer could have said more about mitigating circumstances. See Campbell 477; 22A Cal. Jur. 3d, Crim. Law: Posttrial Proceedings § 408, p. 234 (2017) ("[U]nless the record affirmatively reflects otherwise, the trial court will be deemed to have considered the relevant criteria, such as mitigating circumstances, enumerated in the sentencing rules").

Those state practices matter here because, as the Court explained in *Montgomery*, when "a new substantive rule of constitutional law is established, this Court is careful to limit the scope of any attendant procedural requirement to avoid intruding more than necessary upon the States' sovereign administration of their criminal justice systems." 577 U. S., at 211. So it is here. Because *Montgomery* directs us to "avoid intruding more than necessary" upon the States, *ibid.*, and because a discretionary sentencing procedure suffices to ensure individualized consideration of a defendant's youth, we should not now add still more procedural requirements.

In sum, Jones's alternative argument fails. The Court's precedents do not require an on-the-record sentencing explanation with an implicit finding of permanent incorrigibility.

III

The Court's decision today carefully follows both *Miller* and *Montgomery.* The dissent nonetheless claims that we are somehow implicitly overruling those decisions. We respectfully but firmly disagree: Today's decision does not overrule *Miller* or *Montgomery. Miller* held that a State may not impose a mandatory life-without-parole sentence on a murderer under 18. Today's decision does not disturb that holding. *Montgomery* later held that *Miller* applies retroactively on collateral review. Today's decision likewise does not disturb that holding.

We simply have a good-faith disagreement with the dissent over how to interpret *Miller* and *Montgomery.* That kind of debate over how to interpret relevant precedents is commonplace. Here, the dissent thinks that we are unduly narrowing *Miller* and *Montgomery.* And we, by contrast, think that the dissent would unduly broaden those decisions. The dissent draws inferences about what, in the dissent's view, *Miller* and *Montgomery* "must have done" in order for the decisions to "make any sense." *Post*, at 140 (opinion of SOTOMAYOR, J.). We instead rely on what *Miller* and *Montgomery* said—that is, their explicit language addressing the precise question before us and definitively rejecting any requirement of a finding of permanent incorrigibility.

Notwithstanding our disagreement about whether *Miller* and *Montgomery* require a finding of permanent incorrigibility, we and the dissent both recognize that *Miller* and *Mont-*

gomery have been consequential. *Miller*'s discretionary sentencing procedure has resulted in numerous sentences less than life without parole for defendants who otherwise would have received mandatory life-without-parole sentences. For example, in *Miller* resentencings in Mississippi where Jones was convicted and sentenced, *Miller* has reduced life-without-parole sentences for murderers under 18 by about 75 percent. See The Campaign for the Fair Sentencing of Youth, Tipping Point: A Majority of States Abandon Life-Without-Parole Sentences for Children 7 (2018). Those statistics bear out *Miller*'s prediction: A discretionary sentencing procedure has indeed helped make life-without-parole sentences for offenders under 18 "relatively rar[e]." 567 U. S., at 484, n. 10.

Moreover, as a result of *Montgomery*, many homicide offenders under 18 who received life-without-parole sentences that were final before *Miller* have now obtained new sentencing proceedings and have been sentenced to less than life without parole.

Despite the significant changes wrought by *Miller* and *Montgomery*, the dissent now wants more—an additional constitutional requirement that the sentencer must make a finding of permanent incorrigibility before sentencing a murderer under 18 to life without parole. But to reiterate, in *Miller* and *Montgomery*, the Court unequivocally stated that such a finding is not required. And we will not now rewrite those decisions to impose a requirement that the Court twice rejected.

To be clear, our ruling on the legal issue presented here should not be construed as agreement or disagreement with the sentence imposed against Jones. As this case again demonstrates, any homicide, and particularly a homicide committed by an individual under 18, is a horrific tragedy for all involved and for all affected. Determining the proper sentence in such a case raises profound questions of morality and social policy. The States, not the federal courts, make those broad moral and policy judgments in the first instance when enacting their sentencing laws. And state sentencing judges and juries then determine the proper sentence in individual cases in light of the facts and circumstances of the offense, and the background of the offender.

Under our precedents, this Court's more limited role is to safeguard the limits imposed by the Cruel and Unusual Punishments Clause of the Eighth Amendment. The Court's precedents require a discretionary sentencing procedure in a case of this kind. The resentencing in Jones's case complied with those precedents because the sentence was not mandatory and the trial judge had discretion to impose a lesser punishment in light of Jones's youth. Moreover, this case does not properly present—and thus we do not consider—any as-applied Eighth Amendment claim of disproportionality regarding Jones's sentence. See Brief for United States as *Amicus Curiae* 23; *Harmelin* v. *Michigan*, 501 U. S. 957, 996–1009 (1991) (Kennedy, J., concurring in part and concurring in judgment).

Importantly, like *Miller* and *Montgomery*, our holding today does not preclude the States from imposing additional sentencing limits in cases involving defendants under 18 convicted of murder. States may categorically prohibit life without parole for all offenders under 18. Or States may require sentencers to make extra factual findings before sentencing an offender under 18 to life without parole. Or States may direct sentencers to formally explain on the record why a life-without-parole sentence is appropriate notwithstanding the defendant's youth. States may also establish rigorous proportionality or other substantive appellate review of life-without-parole sentences. All of those options, and others, remain available to the States. See generally J. Sutton, 51 Imperfect Solutions (2018). Indeed, many States have recently adopted one or more of those reforms. See, *e. g.*, Brief for Former West Virginia Delegate John Ellem et al. as *Amici Curiae* in *Mathena* v. *Malvo*, O. T.

2019, No. 18–217, pp. 29–36. But the U. S. Constitution, as this Court's precedents have interpreted it, does not demand those particular policy approaches.

Finally, our holding today is far from the last word on whether Jones will receive relief from his sentence. Jones contends that he has maintained a good record in prison and that he is a different person now than he was when he killed his grandfather. He articulates several moral and policy arguments for why he should not be forced to spend the rest of his life in prison. Our decision allows Jones to present those arguments to the state officials authorized to act on them, such as the state legislature, state courts, or Governor. Those state avenues for sentencing relief remain open to Jones, and they will remain open to him for years to come.

* * *

We affirm the judgment of the Mississippi Court of Appeals.

It is so ordered.

JUSTICE THOMAS, concurring in the judgment.

The Court correctly holds that the Eighth Amendment does not require a finding that a minor be permanently incorrigible as a prerequisite to a sentence of life without parole. But in reaching that result, the majority adopts a strained reading of *Montgomery* v. *Louisiana*, 577 U. S. 190 (2016), instead of outright admitting that it is irreconcilable with *Miller* v. *Alabama*, 567 U. S. 460 (2012)—and the Constitution. The better approach is to be patently clear that *Montgomery* was a "demonstrably erroneous" decision worthy of outright rejection. *Gamble* v. *United States*, 587 U. S. 678, 711 (2019) (THOMAS, J., concurring).

I

Brett Jones, then 15, murdered his grandfather. At the time of his trial and sentencing, Mississippi law automatically punished his crime with life without parole. A few years later, however, this Court held that youthful offenders are constitutionally entitled to an "individualized sentencing" process. *Miller*, 567 U. S., at 465. The Mississippi Supreme Court thus ordered a new hearing at which the judge dutifully considered the factors "relevant to [Jones'] culpability" before again sentencing him to life without parole. App. 149.

Jones appealed, citing yet another new decision—*Montgomery*—in which this Court held that *Miller*'s rule was "substantive" and hence had to be retroactively applied to cases on collateral review. 577 U. S., at 212. Without more, the fact that *Miller* was now retroactive did not help Jones, as he had already received the "individualized" hearing *Miller* required. 567 U. S., at 465. Therefore, Jones argued that *Montgomery* further required the sentencing judge to "make a specific 'finding' that he is irretrievably depraved, irreparably corrupt, or permanently incorrigible." 285 So. 3d 626, 632 (Miss. App. 2017). That theory was not necessarily a stretch—as *Montgomery* explained that a life-without-parole sentence "violates the Eighth Amendment for a child whose crime reflects ' "unfortunate yet transient immaturity." ' " 577 U. S., at 208. But the Mississippi Court of Appeals disagreed, noting that *Montgomery* also "stated that '*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility' [or] 'impose a formal factfinding requirement.' " 285 So. 3d, at 632.

II

Miller and *Montgomery* are from the same lineage of precedent that refashions the Eighth Amendment to accommodate this Court's views of juvenile justice.[1] The similari-

[1] See, *e. g.*, *Roper* v. *Simmons*, 543 U. S. 551, 556, 578 (2005) (prohibiting the execution of a (barely) juvenile murderer who had bragged that his age would allow him to " 'get away with it' "); *Graham* v. *Florida*, 560 U. S. 48, 74 (2010) (prohibiting life-without-parole sentences for juvenile nonhomicide offenders).

ties end there, however, because the decisions cannot be reconciled.

A

Miller announced a purely procedural rule: A State may not automatically sentence a juvenile to life without parole, but must instead provide an individualized sentencing process. In reaching this conclusion, the Court explicitly cabined its holding to cases in which the sentencer lacked "discretion to impose a different punishment." *Miller*, 567 U. S., at 465; accord, *e. g., id.*, at 479–480. Were there any doubt that *Miller* focused only on the availability of individualized sentencing, the Court stressed that it was "not categorically bar[ring] a penalty for a class of offenders or type of crime" but instead "mandat[ing] only that a sentencer follow a certain process." *Id.*, at 483.

Miller's descriptions of its procedural holding track with the opinion's mode of analysis. At one point, for example, *Miller* discussed a line of precedents that condition the death penalty on an individualized sentencing process. *Id.*, at 475–476. Reasoning by analogy, the Court explained that "mandatory penalties" for juveniles "preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." *Id.*, at 476. The Court also canvassed the jurisdictions that had some form of mandatory life-without-parole, *id.*, at 482–487, and nn. 9–10, 13–14, which would have been an unusual detour if the opinion were concerned with anything more than nondiscretionary punishments. And it declined to "consider [the] alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles." *Id.*, at 479.

B

This narrow holding became inconvenient when the Court decided to apply *Miller* retroactively to prisoners whose sentences were already final. Under the approach announced in *Teague* v. *Lane*, 489 U. S. 288 (1989), *Miller* could have been retroactive only if it were a "watershed" rule of criminal procedure or a "substantive" rule, *Beard* v. *Banks*, 542 U. S. 406, 416–419, and n. 7 (2004).

Precedent foreclosed the first option. *Miller* "mandate[d] only that a sentencer follow a certain process" as a prerequisite to life without parole, 567 U. S., at 483, but this directive was hardly "watershed." According to *Teague*, a procedural rule might have a claim to watershed status if it were " ' "implicit in the concept of ordered liberty." ' " *Banks*, 542 U. S., at 417. So limited was this possibility that, in " 'the years since *Teague*, we . . . rejected every claim that a new rule satisfied the requirements for watershed status.' " *Ramos* v. *Louisiana*, 590 U. S. 83, 130 (2020) (KAVANAUGH, J., concurring in part). Or in more concrete terms, we repeatedly suggested that a rule might be watershed only if it were akin to a defendant's right to counsel as articulated in *Gideon* v. *Wainwright*, 372 U. S. 335 (1963). See *Banks*, 542 U. S., at 417–418. Whatever *Miller* might have done, its narrow rule about juvenile sentencing " 'ha[d] none of the primacy and centrality of the rule adopted in *Gideon*.' " *Banks*, 542 U. S., at 420.

Rather than accept what was plainly the case—that *Miller* was procedural, not watershed, and thus not retroactive—*Montgomery* proceeded to "rewrite" it into a substantive rule. 577 U. S., at 224 (Scalia, J., dissenting). Despite acknowledging that "*Miller*'s holding has a procedural component," the majority explained that this procedure was *actually* just a way "to implement a substantive guarantee." *Id.*, at 209–210. This guarantee, according to *Montgomery*, was that "all" juvenile offenders—except for a rare few "whose crimes reflect permanent incorrigibility"—are categorically exempt from life without parole. *Id.*, at 209.

That reimagined rule was substantive under our precedents. Substantive rules include those that " 'prohibi[t] a certain category of punishment for a class of defendants because of their status or offense.' " *Banks*, 542 U. S., at 416.

For example—a rule that "life without parole is an excessive sentence for children whose crimes reflect transient immaturity." *Montgomery*, 577 U. S., at 210. *Montgomery* could not have been clearer that its rule transcended mere procedure: "Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects ' "unfortunate yet transient immaturity." ' " *Id.*, at 208.

The problem with this new rule is that it had little to do with *Miller*. Through a feat of legerdemain, *Montgomery* began by acknowledging that *Miller* did " 'not categorically bar a penalty for a class of offenders or type of crime,' " yet just three sentences later concluded that "*Miller* did bar life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." 577 U. S., at 209. In a similar Janus-faced demonstration, *Montgomery* reiterated *Miller*'s assurance that "trial courts [need not] make a finding of fact regarding a child's incorrigibility," yet decided that "*Miller* drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption." 577 U. S., at 209–211.[2] These statements cannot be reconciled.

[2] The Court's language in this line of precedents is notable. When addressing juvenile murderers, this Court has stated that " '*children* are different' " and that courts must consider "a *child*'s lesser culpability." *Montgomery*, 577 U. S., at 207–208 (emphasis added). And yet, when assessing the Court-created right of an individual of the same age to seek an abortion, Members of this Court take pains to emphasize a "young *woman*'s" right to choose. See, *e. g., Lambert* v. *Wicklund*, 520 U. S. 292, 301 (1997) (Stevens, J., joined by Ginsburg and Breyer, JJ., concurring in judgment) (emphasis added); *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, 899 (1992) (joint opinion of O'Connor, Kennedy, and Souter, JJ.); *Ohio* v. *Akron Center for Reproductive Health*, 497 U. S. 502, 532 (1990) (Blackmun, J., joined by Brennan and Marshall, JJ., dissenting). It is curious how the Court's view of the maturity of minors ebbs and flows depending on the issue.

C

Just as the procedural rule of *Miller* created problems for the majority in *Montgomery*, the substantive rule of *Montgomery* creates problems for the majority in this case. If *Montgomery* is correct about the existence of a concrete class of offenders who—as a matter of fundamental constitutional law—are categorically exempt from a sentence of life without parole, then there must be a determination as to whether Jones falls within that protected class. Otherwise, the "line" *Miller* ostensibly "drew . . . between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption" is more fanciful than real. *Montgomery*, 577 U. S., at 209.

Sure enough, this Court has often demanded factual findings when it comes to other classes of criminals that this Court has declared categorically exempt from certain punishments. See, *e. g., Moore* v. *Texas*, 586 U. S. 133, 142 (2019) (*per curiam*) (finding that an offender "ha[d] shown [that] he is a person with intellectual disability"); *Madison* v. *Alabama*, 586 U. S. 265, 273, 282 (2019) (vacating and remanding "for renewed consideration" of the record after a state court "found [a prisoner] mentally competent" and thus eligible for execution). I doubt that a majority of this Court would tolerate the execution of an offender who alleges insanity or intellectual disability absent a satisfactory finding to the contrary.

In response, the majority suggests that insanity and intellectual disability are legitimate "eligibility criteri[a]" because they are easy to evaluate, whereas "permanent incorrigibility . . . 'is difficult even for expert psychologists to [assess].'" *Ante*, at 107. This notion that the former categories are clear cut and predictable might come as news to the States that have spent years chasing the ever-evolving definitions of mental incompetence promulgated by this Court and its preferred experts. See, *e. g., Moore*, 586 U. S., at 135–142; *Moore* v. *Texas*, 581 U. S. 1, 5–6, 8–21 (2017) (courts must heed "the force of the medical community's consensus"); *Hall* v. *Florida*, 572 U. S. 701, 724 (2014). I trust, however, that future decisions will contain simple and static rules.

D

Montgomery's creation of a categorical exemption for certain offenders thus leaves us with two obvious options. First, we could follow *Montgomery*'s logic and hold that the "legality" of Jones' sentence turns on whether his crime in fact "reflect[s] permanent incorrigibility." 577 U. S., at 205, 209. Or we could just acknowledge that *Montgomery* had no basis in law or the Constitution.

The majority, however, selects a third way: Overrule *Montgomery* in substance but not in name. The opinion candidly admits both that *Miller*'s rule was "procedural" and that *Montgomery* "ma[de] the rule retroactive." *Ante*, at 108, 110–111. The only way to reconcile these statements with the bottom-line judgment in this case—that Jones is not entitled to a determination whether he falls within a constitutionally protected category of offenders—is to reject *Montgomery*. And sure enough, the majority does just that, albeit in a footnote. See *ante*, at 111, n. 4 (explaining that *Montgomery* is "in tension" with many other decisions). But because *Montgomery*'s freewheeling approach to the law is ripe for abuse, the majority's whisper is worth restating above the line: *Montgomery* gave a good-for-one-ride ticket to a class of juvenile offenders, and its errors will never be repeated.

Firm condemnation of *Montgomery* is particularly appropriate because this Court is unable to fully repair the damage it has caused. Although the majority closes the door to courts following *Montgomery* in the future, in doing so it tacitly admits that the horses have already left the barn: "[M]ost offenders who could seek collateral review as a result of *Montgomery* have done so." *Ante*, at 111, n. 4. Today's judgment thus offers cold comfort to the States that have already faced the unenviable choice between "permitting juvenile homicide offenders to be considered for parole" and relitigating murder sentences long after the fact. *Montgomery*, 577 U. S., at 212; see also *id.*, at 226–227 (Scalia, J., dissenting). The least we can do is to fully own up to *Montgomery*'s sins.

The majority also largely leaves untouched *Montgomery*'s violation of the rule that the Constitution " 'leaves the unavoidably moral question of who "deserves" a particular nonprohibited method of punishment to the judgment of the legislatures that authorize the penalty.' " *Miller*, 567 U. S., at 504 (THOMAS, J., dissenting). When the Eighth Amendment was enacted, juveniles even younger than Jones could be tried as adults, and mandatory death sentences were available. See *id.*, at 503, n. 2. "It is therefore implausible that a [15]-year-old's . . . prison sentence—of any length, with or without parole—would have been viewed as cruel and unusual." *Id.*, at 504, n. 2. By failing to condemn *Montgomery*'s expansion of *Miller* to an entire category of individuals, the majority blesses yet another step "on the path to further judicial displacement of the legislative role in prescribing appropriate punishment for crime." 567 U. S., at 500 (ROBERTS, C. J., dissenting).

Finally, I would expressly reject the portion of *Montgomery* that "purported to constitutionalize" the substantive exception "so that it would apply in [the petitioner's] state court proceeding." Brief for Jonathan F. Mitchell et al. as *Amici Curiae* in *Edwards* v. *Vannoy*, O. T. 2020, No. 19–5807, pp. 5–6 (emphasis deleted). Despite this Court's longstanding recognition that "the Constitution neither prohibits nor requires retrospective effect," *Linkletter* v. *Walker*, 381 U. S. 618, 629 (1965); cf. *Teague*, 489 U. S., at 302–310 (plurality opinion) (narrowing *Linkletter* even further), the *Montgomery* Court demanded that the Louisiana courts "recognize [*Miller*'s] retroactive effect." 577 U. S., at 200, 205.

That improper intrusion on state postconviction review is also worth correcting.

* * *

Today's majority labors mightily to avoid confronting the tension between *Miller* and *Montgomery.* But though the Court purports to leave *Montgomery*'s holding intact, it recognizes that *Montgomery*'s analysis is untenable and not to be repeated. It would be simpler to reject *Montgomery* in both name and substance.

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

Today, the Court guts *Miller* v. *Alabama*, 567 U. S. 460 (2012), and *Montgomery* v. *Louisiana*, 577 U. S. 190 (2016). Contrary to explicit holdings in both decisions, the majority claims that the Eighth Amendment permits juvenile offenders convicted of homicide to be sentenced to life without parole (LWOP) as long as "the sentence is not mandatory and the sentencer therefore has discretion to impose a lesser punishment." *Ante*, at 100. In the Court's view, a sentencer never need determine, even implicitly, whether a juvenile convicted of homicide is one of "those rare children whose crimes reflect irreparable corruption." *Montgomery*, 577 U. S., at 209. Even if the juvenile's crime reflects " 'unfortunate yet transient immaturity,' " *Miller*, 567 U. S., at 479, he can be sentenced to die in prison.

This conclusion would come as a shock to the Courts in *Miller* and *Montgomery*. *Miller*'s essential holding is that "a lifetime in prison is a disproportionate sentence for all but the rarest children, those whose crimes reflect 'irreparable corruption.' " *Montgomery*, 577 U. S., at 195 (quoting *Miller*, 567 U. S., at 479–480). Sentencing discretion is "necessary to separate those juveniles who may be sentenced to life without parole from those who may not," *Montgomery*, 577 U. S., at 210, but it is far from sufficient. A sentencer must actually "make th[e] judgment" that the juvenile in question is one of those rare children for whom LWOP is a constitutionally permissible sentence. *Miller*, 567 U. S., at 480. The Court has thus expressly rejected the notion that sentencing discretion, alone, suffices: "Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects unfortunate yet transient immaturity." *Montgomery*, 577 U. S., at 208 (internal quotation marks omitted).

Today, however, the Court reduces *Miller* to a decision requiring "just a discretionary sentencing procedure where youth [is] considered." *Ante*, at 110. Such an abrupt break from precedent demands "special justification." *Ramos* v. *Louisiana*, 590 U. S. 83, 120 (2020) (KAVANAUGH, J., concurring in part) (internal quotation marks omitted). The Court offers none. Instead, the Court attempts to circumvent *stare decisis* principles by claiming that "[t]he Court's decision today carefully follows both *Miller* and *Montgomery*." *Ante*, at 118. The Court is fooling no one. Because I cannot countenance the Court's abandonment of *Miller* and *Montgomery*, I dissent.

I

Time and again, this Court has recognized that "children are constitutionally different from adults for purposes of sentencing." *Miller*, 567 U. S., at 471. In *Roper* v. *Simmons*, 543 U. S. 551 (2005), the Court held that the Eighth Amendment forbids sentencing children to death because "[c]apital punishment must be limited to those offenders . . . whose extreme culpability makes them the most deserving of execution." *Id.*, at 568 (internal quotation marks omitted). Juvenile offenders "cannot with reliability be classified among the worst offenders" for several reasons. *Id.*, at 569. First, "as any parent knows," and as scientific and sociological studies have confirmed, juveniles are less mature and responsible than adults, which "often result[s] in impetuous and ill-considered actions and decisions." *Ibid.* (internal quotation marks omitted). Second, juveniles are "more vulnerable or susceptible to negative influences and outside pressures" and "have less control . . . over their own environment." *Ibid.* Finally, "the character of a juvenile" is "more transitory" than that of an adult. *Id.*, at 570. "[A]s individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." *Ibid.* (internal quotation marks omitted). Weighed against these "signature qualities of youth," the penological justifications for the death penalty collapse. *Id.*, at 570–571 (internal quotation marks omitted).

Next, in *Graham* v. *Florida*, 560 U. S. 48 (2010), this Court held that "[t]he Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide." *Id.*, at 82. "To justify life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible." *Id.*, at 72. But "incorrigibility is inconsistent with youth." *Id.*, at 73 (internal quotation marks omitted). Rather, "[m]aturity can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation." *Id.*, at 79. *Graham* therefore insisted that sentencers not deprive juvenile nonhomicide offenders "of the opportunity to achieve maturity . . . and self-recognition of human worth and potential" by sentencing them to die in prison. *Ibid.*

In *Miller*, this Court extended *Graham*'s logic to juveniles convicted of homicide. *Miller* recognized that "none of what [*Graham*] said about children . . . is crime-specific." 567 U. S., at 473. Thus, taking *Graham* as its "foundation stone," *Miller* reiterated that "the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." 567 U. S., at 470–471, n. 4, 472.

Miller emphasized that LWOP is an " 'especially harsh punishment for a juvenile.' " *Id.*, at 475 (quoting *Graham*, 560 U. S., at 70). "Imprisoning an offender until he dies alters the remainder of his life 'by a forfeiture that is irrevocable.' " 567 U. S., at 474–475 (quoting *Graham*, 560 U. S., at 69). It is the "denial of hope" itself. *Id.*, at 70 (internal quotation marks omitted).

Miller stopped short of prohibiting LWOP for all juveniles convicted of homicide. Instead, it required sentencers to distinguish "between the juvenile offender whose crime reflects unfortunate and transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." 567 U. S., at 479–480 (internal quotation marks omitted). Only those rare few in the latter category are constitutionally eligible for LWOP under *Miller*. As such, before imposing a sentence of LWOP, a sentencer must actually "make that judgment," and make it correctly. *Id.*, at 480; see *Adams* v. *Alabama*, 578 U. S. 994, 999 (2016) (SOTOMAYOR, J., concurring in decision to grant, vacate, and remand).

Finally, in *Montgomery*, this Court confirmed the substantive nature of *Miller*'s prohibition on LWOP for most juveniles. *Montgomery* held that *Miller* applies retroactively in cases on collateral review because it "rendered life without parole an unconstitutional penalty for . . . juvenile offenders whose crimes reflect the transient immaturity of youth." 577 U. S., at 208. Under the retroactivity doctrine in *Teague* v. *Lane*, 489 U. S. 288 (1989), a new constitutional rule is considered "substantive," and thus retroactive, if it "alters the range of conduct or the class of persons that the law punishes." *Montgomery*, 577 U. S., at 206 (internal quotation marks omitted); see *Teague*, 489 U. S., at 311 (plurality opinion). A procedural rule, on the other hand, "regulate[s] only the manner of determining the defendant's culpability." *Montgomery*, 577 U. S., at 206 (emphasis deleted; internal quotation marks omitted). Such rules generally have not applied retroactively. *Id.*, at 198.

Montgomery recognized that *Miller* "has a procedural component," in that "[a] hearing where 'youth and its attendant characteristics' are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not." 577 U. S., at 209–210 (quoting *Miller*, 567 U. S., at 465). The Court made clear, however, that "[t]he hearing does not replace . . . *Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity." 577 U. S., at 210. Rather, the hearing "gives effect" to *Miller*'s prohibition on LWOP by "enabl[ing] a prisoner to show that he falls within the category of persons whom the law may no longer punish [with LWOP]." 577 U. S., at 210. Thus, under *Miller*, juvenile offenders "must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored." 577 U. S., at 213.

II

A

Today, the Court distorts *Miller* and *Montgomery* beyond recognition. According to the majority, "a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient" for a State to sentence a juvenile convicted of homicide to LWOP. *Ante*, at 105. "[S]o long as the sentencer has discretion to 'consider the mitigating qualities of youth' and impose a lesser punishment," any juvenile convicted of homicide may be sentenced to LWOP, even if his crime reflects transient immaturity. *Ante*, at 106 (quoting *Miller*, 567 U. S., at 476). It does not matter whether the sentencer meaningfully considers youth: The Court assumes it will, see *ante*, at 114, but ultimately, the mere existence of "a discretionary sentencing procedure suffices," *ante*, at 118.

The Court rests its conclusion on *Montgomery*'s modest statement that "*Miller* did not impose a formal factfinding requirement," and so "a finding of fact regarding a child's incorrigibility . . . is not required." 577 U. S., at 211. This statement is the linchpin of the Court's opinion. See *ante*, at 101, 105, 106, 110–113. As the Court quietly admits in a footnote, however, *Montgomery* went on to clarify that the fact "[t]hat *Miller* did not impose a formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment." *Montgomery,* 577 U. S., at 211; see *ante,* at 106–107, n. 2 (quoting the same).

Montgomery was equally explicit elsewhere: "*Miller* . . . did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole." 577 U. S., at 208. Sentencing discretion and "[a] hearing where 'youth and its attendant characteristics' are considered as sentencing factors" are necessary to "giv[e] effect to *Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity," but they "d[o] not replace" it. *Id.*, at 210. "Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects ' "unfortunate yet transient immaturity." ' " *Id.*, at 208. If a juvenile offender's crime "did not reflect irreparable corruption," his "hope for some years of life outside prison walls must be restored." *Id.*, at 213. The Court today never addresses *Montgomery*'s clear articulation of *Miller*'s essential holding.

The lone statement on which the Court fixates recognizes only that *Miller* does not mandate a particular procedure for considering a defendant's youth or explaining the sentencer's decision. *Miller* certainly does not require sentencers to invoke any magic words. Using this procedural flexibility, States have adopted different approaches to *Miller*'s inquiry.

For instance, in some States, the prosecution must prove that a juvenile offender is permanently incorrigible beyond a reasonable doubt; in others, the sentencing judge must make a formal finding of irreparable corruption on the record. See Brief for American Bar Association as *Amicus Curiae* 14–15, 19–21. As the Court correctly notes, *Miller* does not require any one of "those particular policy approaches." *Ante,* at 121.

What is necessary, however, is "that a sentencer decide whether the juvenile offender before it is a child whose crimes reflect transient immaturity or is one of those rare children whose crimes reflect irreparable corruption." *Tatum* v. *Arizona,* 580 U. S. 952, 954 (2016) (SOTOMAYOR, J., concurring in decision to grant, vacate, and remand) (internal quotation marks omitted). That is all petitioner Brett Jones seeks. See Tr. of Oral Arg. 6 ("On the most fundamental level . . . what we need is a sentencing judge who understands that permanent incorrigibility is the dispositive rule and determines whether the defendant fits within that rule. And there are any number of ways that it could be done"); Brief for Petitioner 31 (challenging the "failure to find *in any form* whether Brett is permanently incorrigible"). As JUSTICE THOMAS recognizes, "there must be a determination as to whether Jones falls within th[e] protected class" of children who are ineligible for LWOP. *Ante,* at 126 (opinion concurring in judgment). Otherwise, the line between those who may be sentenced to LWOP and those who may not "is more fanciful than real." *Ibid.*

The Court attempts to paper over its mischaracterization of *Miller* and *Montgomery* in several ways. First, it claims that *Miller* barred only "*mandatory* life-without-parole sentences," not "*discretionary* life-without-parole sentences." *Ante,* at 103. *Miller* did prohibit mandatory LWOP sentences for juveniles. See 567 U. S., at 465. To say that *Miller* is limited to mandatory LWOP sentences, however, is to ignore half of its reasoning. *Miller* relied on "the confluence of . . . two lines of precedent." *Id.,* at 470. In one line of cases, the Court had interpreted the Eighth Amendment to require that sentencers make individualized, discretionary decisions when imposing the death penalty. For instance, in *Lockett* v. *Ohio*, 438 U. S. 586 (1978), a plurality of the Court concluded that "the sentencer, in all but the rarest kind of capital case, [can]not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense." *Id.*, at 604 (emphasis deleted; footnote omitted). *Miller* explained that mandatory LWOP sentences violate "individualized sentencing cases" like *Lockett* because they "preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." 567 U. S., at 476–477.

The Court now pretends that *Miller*'s reasoning ended there. It insists that all *Miller* required was "a sentencing procedure similar to the procedure that this Court has required for the individualized consideration of mitigating circumstances in capital cases such as *Woodson* v. *North Carolina*, 428 U. S. 280, 303–305 (1976) (plurality opinion), *Lockett* v. *Ohio*, 438 U. S. 586, 597–609 (1978) (plurality opinion), and *Eddings* v. *Oklahoma*, 455 U. S. 104, 113–115 (1982)." *Ante*, at 108. Reading that conclusion, one would expect *Miller* to have announced that it rested solely on those cases.

Miller was clear, however, that it drew primarily from a different line of precedent headed by *Roper* and *Graham*, which "adopted categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty," regardless of the procedures used to impose the sentences. *Miller*, 567 U. S., at 470. These cases set forth a substantive proportionality principle that the individualized-sentencing cases did not: "[L]ife-without-parole sentences, like capital punishment, may violate the Eighth Amendment when imposed on children" because "the characteristics of youth, and the way they weaken rationales for punishment, can render a life-without-parole sentence disproportionate." *Id.*, at 473.

Mandatory and discretionary sentencing schemes alike can produce disproportionate sentences. Regardless of how it is imposed, a juvenile death sentence is unconstitutional under *Roper*, and a juvenile sentence of LWOP for a nonhomicide offense is unconstitutional under *Graham*. See *Roper*, 543 U. S., at 575 (holding "that the death penalty cannot be imposed upon juvenile offenders"); *Graham*, 560 U. S., at 74 (drawing a "clear line" against "life without parole for juvenile nonhomicide offenders"). So, too, with *Miller*: No set of discretionary sentencing procedures can render a sentence of LWOP constitutional for a juvenile whose crime reflects "unfortunate yet transient immaturity." 567 U. S., at 479 (internal quotation marks omitted).

The Court claims that *Miller* relied on *Roper* and *Graham* "for a simple proposition: Youth matters in sentencing." *Ante*, at 109. That is true, but the Court conflates two ways in which youth matters. When *Miller* was decided, the Court's individualized-sentencing cases had already firmly established "that a defendant's youth is a relevant mitigating circumstance that must be within the effective reach of a capital sentencing jury." *Johnson* v. *Texas*, 509 U. S. 350, 367 (1993); see also *Eddings* v. *Oklahoma*, 455 U. S. 104, 116 (1982) (requiring that sentencers consider "the chronological age of a minor" and "the background and mental and emotional development of a youthful defendant"). The *Miller* Court thus did not need to cite *Roper* and *Graham* as a separate "stran[d] of precedent," *Miller*, 567 U. S., at 470, for that long-recognized proposition. It drew on *Roper* and *Graham* instead to set a substantive limit on the imposition of LWOP on juvenile offenders, even when they commit homicide. The Court today reverses course and concludes that youth does not matter in this way.

Next, the Court exaggerates the meaning of two statements from *Miller*, arguing that it "mandated 'only that a sentencer follow a certain process,'" rather than "'categorically bar[ring] a penalty for a class of offenders or type of crime[,] as, for example, we did in *Roper* or *Graham*.'" *Ante,* at 106, 109 (quoting *Miller*, 567 U. S., at 483). Again, *Montgomery* already rejected this misinterpretation: "*Miller*, it is true, did not bar a punishment for all juvenile offenders," or all juvenile offenders convicted of certain crimes, "as the Court did in *Roper* or *Graham*." 577 U. S., at 209. "*Miller* did bar life without parole, however, for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Ibid.* To "separate those juveniles who may be sentenced to life without parole from those who may not," as *Miller* requires, sentencers must follow a certain process: conducting a "hearing where 'youth and its attendant characteristics' are considered." 577 U. S., at 210. That process is not an end in itself. Rather, it "gives effect to *Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity." *Ibid.*

Finally, the Court argues that *Miller* offered nothing more than a prediction that "a discretionary sentencing procedure would help make life-without-parole sentences relatively rare." *Ante,* at 112. *Miller*'s substantive rule was not a prediction. Rather, *Miller* held that juvenile LWOP sentences must be rare because it is only "the rare juvenile offender whose crime reflects irreparable corruption." 567 U. S., at 479–480 (internal quotation marks omitted). Simply put, there are very few juveniles for whom the "'signature qualities'" of youth do not undermine the penological justifications for LWOP. *Id.*, at 476. Youth is "a time of immaturity, irresponsibility, impetuousness, and recklessness," and, almost invariably, those "qualities are all transient." *Ibid.* (internal quotation marks and brackets omitted).

In any event, the data since *Miller* prove that sentencing discretion alone will not make LWOP a rare sentence for juvenile offenders. Even after *Montgomery*, Mississippi courts require only that a sentencer consider youth-related factors "in a non-arbitrary fashion" before imposing a sentence of LWOP. See, *e. g., Miller* v. *State*, 327 So. 3d 121, 129 (Miss. App. 2020). Unbound by *Miller*'s essential holding, more than a quarter of Mississippi's resentencings have resulted in the reimposition of LWOP. See Brief for Juvenile Law Center et al. as *Amici Curiae* 20.[1]

Pennsylvania, in contrast, has recognized that "*Miller* requires far more than mere consideration of an offender's age," as "a life-without-parole sentence imposed on a juvenile is illegal" unless "the defendant will forever be incorrigible, without any hope for rehabilitation." *Commonwealth* v. *Batts*, 640 Pa. 401, 440, 444, 163 A. 3d 410, 433, 435 (2017). Pennsylvania has adopted a number of procedures to guide sentencing courts in applying *Miller*'s rule, including a presumption against juvenile LWOP that the State must rebut through proof beyond a reasonable doubt. 640 Pa., at 476, 163 A. 3d, at 454–455. Fewer than 2 percent of resentencings in Pennsylvania have resulted in the reimposition of LWOP. See The Campaign for the Fair Sentencing of Youth, Tipping Point: A Majority of States Abandon Life-Without-Parole Sentences for Children 7 (2018) (Tipping Point).

These States' experiences show that juvenile LWOP sentences will not be rare simply by virtue of sentencing discretion. Sentencers will not "necessarily . . . consider the de-

[1] Elsewhere, the numbers are even more alarming. Like Mississippi courts, Louisiana courts have concluded that "*Miller* requires the sentencing court to consider an offender's youth and attendant characteristics as mitigating circumstances." *State* v. *Keith*, 51,389, p. 3 (La. App. 2 Cir. 6/21/17), 223 So. 3d 767, 770. As of 2020, Louisiana has imposed LWOP on an astonishing 57 percent of eligible juvenile offenders since *Miller* was decided. See Louisiana Center for Children's Rights, Louisiana's Compliance with *Miller* v. *Alabama* 1 (2020).

fendant's youth," *ante,* at 114, and they certainly will not necessarily conduct *Miller*'s essential inquiry. If sentencing discretion is all that is required, far too many juvenile offenders will be sentenced to die in prison.[2]

B

The Court's misreading of *Miller* and *Montgomery* is egregious enough on its own. The Court twists precedent even further, however, by distorting *Miller* in a way that cannot be reconciled with *Montgomery*'s holding that *Miller* applies retroactively under the *Teague* doctrine. See *ante,* at 128 (opinion of THOMAS, J.). That doctrine divides new rules of constitutional law into two categories: substantive and procedural. As noted above, *Montgomery* held that *Miller* applies retroactively based solely on "*Teague*'s first exception for substantive rules." 577 U. S., at 200. For *Montgomery* to make any sense, then, *Miller* must have done more than mandate a certain procedure. Rather, it "eliminated a State's power to . . . impose a given punishment." 577 U. S., at 201.[3]

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[2] The harm from these sentences will not fall equally. The racial disparities in juvenile LWOP sentencing are stark: 70 percent of all youths sentenced to LWOP are children of color. See Tipping Point 10; see also Brief for Juvenile Law Center et al. as *Amici Curiae* 21 (reporting that "[i]n the years before *Graham* and *Miller,* courts sentenced Black juvenile offenders to life imprisonment without parole ten times more often than white offenders"); Mills, Dorn, & Hritz, Juvenile Life Without Parole in Law and Practice: Chronicling the Rapid Change Underway, 65 Am. U. L. Rev. 535, 579–580 (2016) ("Non-whites are overrepresented among the JLWOP population in ways perhaps unseen in any other aspect of our criminal justice system"). The trend has worsened since *Miller* v. *Alabama,* 567 U. S. 460 (2012): 72 percent of children sentenced to LWOP after *Miller* were Black, compared to 61 percent of children sentenced before *Miller.* Tipping Point 10.

[3] JUSTICE THOMAS agrees that *Montgomery* mandates such a reading of *Miller,* but he claims that *Miller* itself did not establish a substantive rule. See *ante,* at 123–125. That is incorrect. As discussed, *Miller* prohibited mandatory LWOP sentences not only because mandatory sentencing pre-

Today, however, the Court transforms *Miller* into a decision requiring only a "discretionary sentencing procedure." *Ante*, at 118. At the same time, the Court insists that it "does not disturb" *Montgomery*'s holding "that *Miller* applies retroactively on collateral review." *Ante*, at 118. In other words, the Court rewrites *Miller* into a procedural rule and, paradoxically, maintains that *Miller* was nevertheless "substantive for retroactivity purposes." *Ante*, at 110.

That explanation undoes *Teague*'s distinction between substantive and procedural rules. If a rule that requires only a sentencing procedure is substantive for retroactivity purposes, then this Court has improperly classified numerous sentencing rules as procedural. To take one example, in *Mills* v. *Maryland*, 486 U. S. 367 (1988), this Court invalidated a capital sentencing procedure requiring jurors to disregard mitigating factors that were not found unanimously. That holding was procedural because it altered only "the range of permissible methods for determining whether a defendant's conduct is punishable by death." *Schriro* v. *Summerlin*, 542 U. S. 348, 353 (2004). Under the Court's logic today, however, the rule in *Mills* and other rules of sentencing procedure should have applied retroactively, even though the Court has held that they do not. See *Beard* v. *Banks*, 542 U. S. 406, 416–417 (2004) (holding that *Mills* announced a procedural rule); *Summerlin*, 542 U. S., at 354 (treating as procedural the rule set forth in *Ring* v. *Arizona*, 536 U. S. 584 (2002), that a jury, rather than a judge, must find aggravating circumstances necessary for the imposition of the

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cludes individualized consideration of a juvenile's youth, but also because "such a scheme poses too great a risk of disproportionate punishment." 567 U. S., at 479. Applying the principles of proportionality set forth in *Roper* and *Graham*, *Miller* "rendered life without parole an unconstitutional penalty for a class of defendants because of their status[,] that is, juvenile offenders whose crimes reflect the transient immaturity of youth." *Montgomery*, 577 U. S., at 208 (internal quotation marks omitted). As a result, "*Miller* is no less substantive than are *Roper* and *Graham*." *Id.*, at 209.

death penalty). If future litigants make such arguments, it will be because the Court's contortion of *Miller* and *Montgomery* paves the way for them to do so.

C

Rather than read *Miller* and *Montgomery* fairly, the Court reprises Justice Scalia's dissenting view in *Montgomery* that *Miller* requires only a "youth-protective procedure." 577 U. S., at 225 (emphasis deleted). Justice Scalia's view did not prevail, however. *Montgomery*'s interpretation of *Miller* is binding precedent, just as *Miller* itself is.

Any doubts the Court may harbor about the merits of those decisions do not justify overruling them. See *June Medical Services L. L. C.* v. *Russo*, 591 U. S. 299, 346 (2020) (ROBERTS, C. J., concurring in judgment) ("[F]or precedent to mean anything, the doctrine must give way only to a rationale that goes beyond whether the case was decided correctly"). As this Court has consistently reiterated, "a departure from precedent demands special justification." *Gamble* v. *United States*, 587 U. S. 678, 691 (2019) (internal quotation marks omitted); accord, *Kisor* v. *Wilkie*, 588 U. S. 558, 586–588 (2019); *Kimble* v. *Marvel Entertainment, LLC*, 576 U. S. 446, 455–456 (2015).

The Court offers no such justification today. Nor could it. The traditional *stare decisis* factors include the quality of the precedent's reasoning, its consistency with other decisions, legal and factual developments since the precedent was decided, and its workability. See *Ramos*, 590 U. S., at 121 (opinion of KAVANAUGH, J.). None supports overturning *Miller* or *Montgomery.* As explained above, those decisions are firmly rooted in two lines of precedent and fundamental principles of proportionality.[4] Subsequent legal and fact-

[4] JUSTICE THOMAS claims that *Miller* and *Montgomery* "refashio[n] the Eighth Amendment to accommodate this Court's views of juvenile justice." *Ante,* at 122; see *ante,* at 128. In so doing, JUSTICE THOMAS "seek[s] to relitigate old Eighth Amendment battles" based on "arguments

ual developments have reinforced their reasoning. Fifteen state courts of last resort, for instance, have recognized that *Miller* announced a substantive rule barring LWOP for any juvenile whose crime does not reflect permanent incorrigibility. See Reply Brief 18, n. 6. Twenty States and the District of Columbia have changed their policies to prohibit LWOP sentences for all juvenile offenders, including a number of States that "had discretionary sentencing schemes or a mixture of both mandatory and discretionary sentences." Brief for Former West Virginia Delegate John Ellem et al. as *Amici Curiae* in *Mathena* v. *Malvo*, O. T. 2019, No. 18–217, pp. 34–35; S. 256, 133d Gen. Assembly (Ohio 2020); Va. Code Ann. § 53.1–165.1 (2020). Finally, *Miller* and *Montgomery* have not proved unworkable: To the contrary, they have spurred reforms across the country while "avoid[ing] intruding more than necessary upon the States' sovereign administration of their criminal justice systems." *Montgomery*, 577 U. S., at 211. Requiring sentencers to make an explicit or implicit determination of permanent incorrigibility before sentencing a juvenile offender to LWOP imposes no costs that justify overturning precedent.

Instead of addressing these factors, the Court simply rewrites *Miller* and *Montgomery* to say what the Court now wishes they had said, and then denies that it has done any such thing. See *ante*, at 118. The Court knows what it is doing. It admits as much. Rather than try to harmonize its decision today with *Montgomery*'s retroactivity holding, it confesses in a footnote that its rewriting of precedent is inconsistent with *Montgomery* and basic retroactivity principles. See *ante*, at 110–111, n. 4. The Court's solution? It urges lower courts to simply ignore *Montgomery* going for-

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this Court has previously (and often) rejected." *Miller*, 567 U. S., at 471, n. 4; see *Graham* v. *Florida*, 560 U. S. 48, 58 (2010) ("To determine whether a punishment is cruel and unusual, courts must look beyond historical conceptions to the evolving standards of decency that mark the progress of a maturing society" (internal quotation marks omitted)).

ward. *Ante*, at 111, n. 4 ("[T]he Court's retroactivity precedents that both pre-date and post-date *Montgomery* . . . and not *Montgomery* . . . must guide the determination of whether rules other than *Miller* are substantive").[5] Instead of "disturb[ing]" *Montgomery*'s retroactivity holding, *ante*, at 111, n. 4, the Court attempts to bury it.

How low this Court's respect for *stare decisis* has sunk. Not long ago, that doctrine was recognized as a pillar of the " 'rule of law,' " critical to "keep the scale of justice even and steady, and not liable to waver with every new judge's opinion." *Ramos*, 590 U. S., at 116 (opinion of KAVANAUGH, J.) (internal quotation marks omitted). Given these weighty interests, the Court "usually require[d] that a party ask for overruling, or at least obtain[ed] briefing on the overruling question," and then "carefully evaluate[d] the traditional *stare decisis* factors." *Barr* v. *American Assn. of Political Consultants, Inc.*, 591 U. S. 610, 621, n. 5 (2020). Now, it seems, the Court is willing to overrule precedent without even acknowledging it is doing so, much less providing any special justification. It is hard to see how that approach is "founded in the law rather than in the proclivities of individuals." *Ramos*, 590 U. S., at 116 (opinion of KAVANAUGH, J.) (internal quotation marks omitted).

For present purposes, sentencers should hold this Court to its word: *Miller* and *Montgomery* are still good law.[6] See

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[5] Of course, as already discussed, the Court is perfectly content to rely on *Montgomery* for its statement that a finding of fact regarding permanent incorrigibility is not required. That isolated piece of *Montgomery*, apparently, still carries the full weight of precedent. Anything more inconvenient, however, the Court today discards.

[6] The Court leaves open the possibility of an "as-applied Eighth Amendment claim of disproportionality." *Ante*, at 120 (citing *Harmelin* v. *Michigan*, 501 U. S 957, 996–1009 (1991) (Kennedy, J., concurring in part and concurring in judgment)). In the context of a juvenile offender, such a claim should be controlled by this Court's holding that sentencing "a child whose crime reflects transient immaturity to life without parole . . . is disproportionate under the Eighth Amendment." *Montgomery*, 577 U. S.,

ante, at 118 ("Today's decision does not overrule *Miller* or *Montgomery*"). Sentencers are thus bound to continue applying those decisions faithfully. Thankfully, many States have already implemented robust procedures to give effect to *Miller* and *Montgomery*. In other States, the responsibility falls squarely on individual sentencers to use their discretion to "separate those juveniles who may be sentenced to life without parole from those who may not." *Montgomery*, 577 U. S., at 210. Failing to do so violates the Eighth Amendment.

III

Brett Jones, like all juvenile offenders facing a sentence of LWOP, deserves an answer to *Miller*'s essential question: whether his crime demonstrates that he is permanently incorrigible. Ordinarily, an appellate court should not pass on that question in the first instance. But the Court today guarantees that the state sentencing court will never have to give Jones an answer. It thus bears acknowledging that, based on the evidence presented below, it is hard to see how Jones is one of the rare juvenile offenders "whose crime reflects irreparable corruption." *Miller*, 567 U. S., at 479–480 (internal quotation marks omitted). In fact, many aspects of Jones's crime seem to epitomize "unfortunate yet transient immaturity." *Id.*, at 479 (internal quotation marks omitted); see 2018 WL 10700848, *11 (Miss., Nov. 27, 2018) (Kitchens, P. J., dissenting) ("Jones's actions reflect [the hallmark] features [of youth] at every turn").[7]

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at 211; see *Miller*, 567 U. S., at 481 ("*Harmelin* had nothing to do with children and did not purport to apply its holding to the sentencing of juvenile offenders").

[7] Even as it disclaims any responsibility for evaluating permanent incorrigibility, the Court emphasizes the details of Jones's crime and alludes to other homicides committed by juveniles throughout the country. See *ante*, at 102, 105. The gravity of these violent acts was not lost on the Court in *Miller*, which set forth its substantive rule specifically for the subset of juvenile offenders who commit homicide. See also *Roper*, 543 U. S., at 572 ("[W]e cannot deny or overlook the brutal crimes too many

Jones killed his grandfather just 23 days after Jones's 15th birthday. App. 71. In his short life before the murder, Jones was the victim of violence and neglect that he was too young to escape. Jones's biological father was an alcoholic who physically abused Jones's mother, knocking out her teeth and breaking her nose on several occasions. *Id.*, at 71–72. The two separated when Jones was two years old. *Id.*, at 71. Jones's mother then married Jones's stepfather, who was also abusive, especially toward Jones. He beat Jones with belts, switches, and a paddle labeled "The Punisher." *Id.*, at 39–40, 78, 81. He rarely called Jones or his brother by their names, preferring cruel epithets. *Id.*, at 77, 81, 101 ("[H]is favorite thing to call them was little motherf***ers"). According to Jones's mother, Jones's stepfather "hated Brett more because Brett reminded him of [Jones's biological father]." *Id.*, at 78. According to Jones's grandmother, he was simply "easier to hurt and beat." *Id.*, at 39. In 2004, after Jones came home late one day, Jones's stepfather flew into a rage and grabbed Jones by the neck, preparing to beat him with a belt. *Id.*, at 128–129. This time, however, Jones fought back and told his stepfather, "No, you're not going to hit me ever again." *Id.*, at 80 (emphasis deleted). Jones took a swing at his stepfather and split open his ear. *Ibid.* The police were called, and Jones was arrested.[8] *Ibid.* Jones's stepfather then threatened to kick out Jones's mother and brother if Jones did not move out. *Id.*, at 81. As a result, Jones's grandparents picked him up less than two

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juvenile offenders have committed"). Notwithstanding the unique "moral culpability and consequential harm" of homicide, *Miller* reasoned that *Graham*'s insights about children "are evident in the same way, and to the same degree." 567 U. S., at 473. The point of *Miller* and *Montgomery* is that juveniles, even those who commit murder, have the capacity to grow and mature, to rehabilitate. The Eighth Amendment requires that sentencers (and reviewing courts) not presume that most juveniles will forever remain the "murderers," *ante*, at 109, they once were.

[8] This was Jones's only prior contact with the juvenile justice system. See Brief for Petitioner 35.

months before the murder and brought him to Mississippi. *Id.*, at 47.

When he moved, Jones lost access to medications that he had been taking for mental health issues. *Id.*, at 38–39.[9] When he was 11 or 12 years old, Jones began cutting himself so that he "would not feel the panic and the hurt that was inside of [his] head." *Id.*, at 75. He later experienced hallucinations and was prescribed antidepressant medications. *Id.*, at 92, 124. These medications were supposed to be tapered off gradually. *Id.*, at 38–39. When Jones left for Mississippi, however, they were abruptly cut off.

The murder was precipitated by a dispute over Jones's girlfriend. After Jones moved, his girlfriend ran away from her home in Florida to stay at Jones's grandparents' home in secret. 938 So. 2d 312, 313 (Miss. App. 2006). On the day of the murder, Jones's grandfather, Bertis Jones, discovered that Jones's girlfriend had been staying in their home. *Ibid.* He ordered her out. *Ibid.* Later that day, Jones was making a sandwich in the kitchen using a steak knife. *Id.*, at 314. Jones said something disrespectful to his grandfather, who started yelling. *Ibid.* The two began pushing each other, and Jones's grandfather tried to hit him. *Ibid.* Jones stabbed his grandfather with the steak knife. *Ibid.* Jones's grandfather came at Jones again, and the fight continued. *Ibid.* Jones ultimately stabbed his grandfather eight times,

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[9] Jones's mother has also been diagnosed with a number of conditions, including posttraumatic stress disorder, bipolar disorder, and manic depression. App. 74. As a result, throughout Jones's life, she experienced panic attacks and emotional breakdowns. *Id.*, at 74–75. As a child, Jones witnessed his mother cutting herself. *Id.*, at 122–123. The types of adverse childhood experiences that Jones endured, including physical abuse, domestic violence, and mental illness in family members, are strong predictors of negative outcomes for children, including violence. J. Garbarino, Miller's Children 10–12 (2018); see *id.*, at 12 ("[E]levated adversity scores are as common among killers as they are rare in the general adolescent population").

grabbing a second knife when the first one broke. 2018 WL 10700848, *7 (Kitchens, P. J., dissenting).

No one disputes that this was a terrible crime. *Miller*, however, held that "the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." 567 U. S., at 472. Jones's crime reflects these distinctive attributes: "That a teenager in trouble for having been caught concealing his girlfriend at his grandparents' home would attempt to solve the problem by resorting to violence dramatically epitomizes immaturity, impetuosity, and failure to appreciate risks or consequences." 2018 WL 10700848, *11 (Kitchens, P. J., dissenting).

Jones then attempted to save his grandfather by administering CPR. 938 So. 2d, at 314. When that failed, he clumsily tried to hide what he had done. 2018 WL 10700848, *11 (Kitchens, P. J., dissenting). He was spotted walking around in plain sight, covered in blood, trembling and muttering to himself. *Ibid.* When a neighbor questioned him, Jones told a feeble lie, claiming that his grandfather had left and that the blood on his clothes was " 'a joke.' " 938 So. 2d, at 314. Jones then met up with his girlfriend and attempted to hitchhike, but not to make a getaway. Instead, he was trying to go see his grandmother to tell her what had happened. *Id.*, at 315. The police stopped Jones, found that he was carrying a pocket knife, and asked if it was the knife he " 'did it with.' " *Ibid.* Jones replied, " 'No, I already got rid of it.' " *Ibid.* He then agreed to be interviewed by three police detectives, "without invoking his right to silence or his right to counsel and without a parent or guardian present." 2018 WL 10700848, *11 (Kitchens, P. J., dissenting). Thus, "Jones's behavior in the immediate aftermath of his tragic actions also demonstrated his fundamental immaturity." *Ibid.*

At his resentencing hearing, Jones provided evidence that not only is he capable of rehabilitation, but he had in fact already matured significantly since his crime. In more than five years in prison, Jones committed only two disciplinary infractions. App. 134–135. While incarcerated, Jones earned his GED and sought out work, becoming a "very good employee." *Id.*, at 106, 109, 153. Jones and his prison unit manager often discussed the Bible, and in time, his unit manager came to think of Jones "almost like [a] son." *Id.*, at 107. Jones confided in him that Jones "regretted" what he had done. *Id.*, at 112.

Jones's grandmother (Bertis Jones's widow) testified at Jones's resentencing hearing and submitted an *amicus* brief to this Court. She remains "steadfast in her belief that Brett is not and never was irreparably corrupt." Brief for Madge Jones et al. as *Amici Curiae* 4. She speaks with Jones weekly, encouraging him as he takes college courses and serves in the prison ministry. *Ibid.* Jones's younger brother, Marty, and his other family members have also stayed by his side.

This significant body of evidence does not excuse Jones's crime. It does mean, however, that under *Miller* and *Montgomery*, there is a strong likelihood that Jones is constitutionally ineligible for LWOP. His crime, while terrible, appears to have been the product of "unfortunate yet transient immaturity." *Miller*, 567 U. S., at 479 (internal quotation marks omitted). Notably, the State called no witnesses and offered no evidence at the resentencing hearing to rebut Jones's proof that his crime reflected the "recklessness" and "impulsivity" characteristic of juveniles. *Montgomery*, 577 U. S., at 207 (internal quotation marks omitted); see App. 23, 136.

In resentencing Jones to LWOP, the sentencing court failed to apply *Miller* properly. Instead, it followed the instructions of the Mississippi Supreme Court, which held that "*Miller* rendered [Mississippi's] sentencing scheme unconstitutional if, and only if, the sentencing authority fails to take into account characteristics and circumstances unique to juveniles." 122 So. 3d 698, 702 (2013). Thus, the sentencing court simply considered the "*Miller* factors" as part of the "mitigating and the aggravating circumstances." App. 149. It never addressed *Miller*'s central inquiry: whether Jones is one of the rare juveniles whose crimes reflect irreparable corruption. 567 U. S., at 479–480. Because the sentencing court failed to ask and answer this critical question, Jones's sentence should not stand.

IV

It is important not to lose sight of what is at stake in this case. "The Eighth Amendment's prohibition of cruel and unusual punishment guarantees individuals the right not to be subjected to excessive sanctions." *Miller*, 567 U. S., at 469 (internal quotation marks omitted). In *Roper*, *Graham*, *Miller*, and *Montgomery*, the Court recognized that this guarantee has special significance for children. The Eighth Amendment does not excuse children's crimes, nor does it shield them from all punishment. It does, however, demand that most children be spared from punishments that "giv[e] no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope." *Graham*, 560 U. S., at 79.

Jones and other juvenile offenders like him seek only the possibility of parole. Not the certainty of release, but the opportunity, at some point in their lives, to show a parole board all they have done to rehabilitate themselves and to ask for a second chance. Jones recognizes that the parole board may ultimately decide he must spend his entire life behind bars. He simply requests that the State not "mak[e] the judgment at the outset that [he] never will be fit to reenter society." *Id.*, at 75. The Eighth Amendment requires that most juvenile offenders be given this small "hope for some years of life outside prison walls." *Montgomery*, 577 U. S., at 213.[10]

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[10] Having deprived Jones of his constitutional right, the Court gestures at a potential lifeline from other institutions, including the Mississippi Legislature or Governor. *Ante*, at 121. But "the remote possibility" of

At his resentencing hearing, Jones told the court, "I'm not the same person I was when I was 15. . . . I've become a pretty decent person in life. And I've pretty much taken every avenue that I could possibly take in prison to rehabilitate myself." App. 152. "Minors do have the ability to change," he reflected. *Ibid.* He noted in closing, "If you decide to send me back without the possibility of parole, I will still do exactly what I've been doing for ten years. But all I can do is ask you . . . please give me just one chance to show the world, man, like, I can be somebody. I've done everything I could over the past ten years to be somebody. . . . I can't change what was already done. I can just try to show . . . I've become a grown man." *Id.*, at 153. Today, Jones is 31. His time spent in prison has now eclipsed the childhood he had outside of it.

Jones should know that, despite the Court's decision today, what he does in life matters. So, too, do the efforts of the almost 1,500 other juvenile offenders like Jones who are serving LWOP sentences. Of course, nothing can repair the damage their crimes caused. But that is not the question. The question is whether the State, at some point, must consider whether a juvenile offender has demonstrated maturity and rehabilitation sufficient to merit a chance at life beyond the prison in which he has grown up. See *Graham*, 560 U. S., at 79. For most, the answer is yes.

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such action "does not mitigate the harshness of the sentence" that Jones now faces. *Graham*, 560 U. S., at 70. The Eighth Amendment guarantees juvenile offenders like Jones a basic constitutional protection against disproportionate punishments. The Court should not leave the vindication of such important legal rights to others, or to chance.

ALASKA *v.* WRIGHT

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

No. 20–940. Decided April 26, 2021

An Alaska jury convicted Sean Wright of sexual abuse charges, and he served his sentence for those state crimes. Wright then moved to Tennessee, where he failed to register as a sex offender as required by federal law. See 34 U. S. C. §§ 20911, 20913. Wright pleaded guilty to failure to register and received a sentence of time served along with five years of supervised release. During those federal proceedings in Tennessee, Wright filed a petition for a writ of habeas corpus in the United States District Court for the District of Alaska pursuant to 28 U. S. C. §§ 2241 and 2254. He argued that the Alaska Supreme Court had unreasonably applied clearly established federal law when it denied his Sixth Amendment claims and affirmed his state conviction on the sexual abuse charges. The District Court denied Wright's petition because Wright was not "in custody pursuant to the judgment of a State court." § 2254(a). The Ninth Circuit reversed, reasoning that because Wright's state conviction was "a necessary predicate" to his federal conviction, Wright was in custody pursuant to a state-court judgment.

Held: The Court of Appeals clearly erred. Section 2254(a) permits a federal court to entertain an application for a writ of habeas corpus on behalf of a person "in custody pursuant to the judgment of a State court." That Wright's state conviction served as a predicate for his federal conviction did not render him "in custody pursuant to the judgment of a State court" under § 2254(a). See *Maleng* v. *Cook*, 490 U. S. 488 (*per curiam*).

Certiorari granted; 819 Fed. Appx. 544, vacated and remanded.

Per Curiam.

In 2009, an Alaska jury convicted Sean Wright of 13 counts of sexual abuse of a minor. See *State* v. *Wright*, 404 P. 3d 166, 170 (Alaska 2017). Wright finished serving his sentence in Alaska in 2016, and shortly thereafter he moved to Tennessee. Once there, he failed to register as a sex offender as required by federal law. See Sex Offender Registration and Notification Act, 120 Stat. 591, 593, 34 U. S. C. §§ 20911, 20913. Wright pleaded guilty to one count of failure to register, see 18 U. S. C. § 2250(a), and ultimately received a sentence of time served along with five years of supervised release. See Judgment in *United States* v. *Wright*, No. 1:17–cr–00112, ECF Doc. No. 66 (ED Tenn.).

During the course of those federal proceedings, Wright filed a petition for a writ of habeas corpus in the United States District Court for the District of Alaska pursuant to 28 U. S. C. §§ 2241 and 2254. He argued that the Alaska Supreme Court had unreasonably applied clearly established federal law when it denied his Sixth Amendment claims and affirmed his 2009 state conviction and sentence. The District Court denied the motion on the threshold ground that Wright was not "in custody pursuant to the judgment of a State court." § 2254(a). Noting that a proper motion under § 2254(a) requires more than merely being "in custody" *somewhere*, the court reasoned that "the proper procedure for Wright to challenge his current federal custody would be a motion filed in the Eastern District of Tennessee pursuant to 28 U. S. C. § 2255." App. to Pet. for Cert. 16a.

The Court of Appeals reversed. In its view, Wright's state conviction was " 'a necessary predicate' " to his federal conviction, 819 Fed. Appx. 544, 545 (CA9 2020) (quoting *Zichko* v. *Idaho*, 247 F. 3d 1015, 1019 (CA9 2001)), so Wright was in fact in custody pursuant to the judgment of a state court. The panel declined to assess the District Court's view that § 2255, rather than § 2254, provided the proper route for Wright to challenge his current custody. 819 Fed. Appx., at 546, n. 1. One judge concurred and asserted that § 2254 was the proper mechanism "because Wright is not attacking the constitutionality of his federal conviction for failing to register as a sex offender in Tennessee; he is collaterally attacking the constitutionality of his predicate Alaska conviction for sexual abuse of a minor." *Id.*, at 546.

The Court of Appeals clearly erred. Section 2254(a) permits a federal court to entertain an application for a writ of habeas corpus on behalf of a person "in custody pursuant to the judgment of a State court." In *Maleng* v. *Cook*, 490 U. S. 488 (1989) (*per curiam*), we held that a habeas petitioner does not remain "in custody" under a conviction "after the sentence imposed for it has fully expired, merely because of the possibility that the prior conviction will be used to enhance the sentences imposed for any subsequent crimes of which he is convicted." *Id.*, at 492; see also *id.*, at 490 (noting the "in custody" requirement appears in both §§ 2241(c)(3) and 2254(a)). It made no difference, we said, that the possibility of a prior-conviction enhancement had materialized for the habeas petitioner in that case: "When the second sentence is imposed, it is pursuant to the second conviction that the petitioner is incarcerated and is therefore 'in custody.'" *Id.*, at 492–493.

That Wright's state conviction served as a predicate for his federal conviction thus did not render him "in custody pursuant to the judgment of a State court" under § 2254(a). If Wright's second conviction had been for a state crime, he independently could have satisfied § 2254(a)'s "in custody" requirement, see *Lackawanna County District Attorney* v. *Coss*, 532 U. S. 394, 401–402 (2001), though his ability to attack the first conviction by that means would have been limited, see *id.*, at 402–404. Wright could not satisfy § 2254(a) on that independent basis for the simple reason that his second judgment was entered by a federal court.

* * *

We express no view on the other theories Wright advanced before the District Court for meeting the requirements of § 2254(a). We grant the petition for a writ of certiorari, vacate the judgment of the United States Court of Appeals for the Ninth Circuit, and remand the case to that court for further proceedings consistent with this opinion.

It is so ordered.

NIZ-CHAVEZ *v.* GARLAND, ATTORNEY GENERAL

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

No. 19–863. Argued November 9, 2020—Decided April 29, 2021

Nonpermanent resident aliens ordered removed from the United States under federal immigration law may be eligible for discretionary relief if, among other things, they can establish their continuous presence in the country for at least 10 years. 8 U. S. C. § 1229b(b)(1). But the so-called stop-time rule included in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides that the period of continuous presence "shall be deemed to end . . . when the alien is served a notice to appear" in a removal proceeding under § 1229a. § 1229b(d)(1). The term "notice to appear" is defined as "written notice . . . specifying" certain information, such as the charges against the alien and the time and place at which the removal proceedings will be held. § 1229(a)(1). A notice that omits any of this statutorily required information does not trigger the stop-time rule. See *Pereira* v. *Sessions*, 585 U. S. 198. Here, the government ordered the removal of petitioner Agusto Niz-Chavez and sent him a document containing the charges against him. Two months later, it sent a second document, providing Mr. Niz-Chavez with the time and place of his hearing. The government contends that because the two documents collectively specified all statutorily required information for "a notice to appear," Mr. Niz-Chavez's continuous presence in the country stopped when he was served with the second document.

Held: A notice to appear sufficient to trigger the IIRIRA's stop-time rule is a single document containing all the information about an individual's removal hearing specified in § 1229(a)(1). Pp. 160–172.

(a) Section 1229b(d)(1) states that the stop-time rule is triggered by serving "a notice," and § 1229(a)(1) explains that "written notice" is "referred to as a 'notice to appear.'" Congress's decision to use the indefinite article "a" suggests it envisioned "a" single notice provided at a discrete time rather than a series of notices that collectively provide the required information. While the indefinite article "a" can sometimes be read to permit multiple installments (such as "a manuscript" delivered over months), that is not true for words like "notice" that can refer to either a countable object ("a notice") or a noncountable abstraction ("sufficient notice"). The inclusion of an indefinite article suggests Congress used "notice" in its countable sense. More broadly, Congress has used indefinite articles to describe other case-initiating pleadings—such as an indictment, an information, or a civil complaint, see, *e. g.,* Fed. Rules Crim. Proc. 7(a), (c)(1), (e); Fed. Rule Civ. Proc. 3—and none suggest those documents might be delivered by installment. Nor does the Dictionary Act aid the government, as that provision merely tells readers of the U. S. Code to assume "words importing the singular include and apply to several persons, parties, or things." 1 U. S. C. § 1. That provision means only that terms describing a single thing ("a notice") can apply to more than one of that thing ("ten notices"). While it certainly allows the government to send multiple notices to appear to multiple people, it does not mean a notice to appear can consist of multiple documents. Pp. 160–165.

(b) The IIRIRA's structure and history support requiring the government to issue a single notice containing all the required information. Two related provisions, §§ 1229(e)(1) and 1229a(b)(7), both use a definite article with a singular noun ("the notice") when referring to the government's charging document—a combination that again suggests a discrete document. Another provision, § 1229(a)(2)(A), requires "a written notice" when the government wishes to change an alien's hearing date. The government does not argue that this provision contemplates providing "the new time or place of the proceedings" and the "consequences . . . of failing . . . to attend such proceedings" in separate documents. Yet the government fails to explain why "a notice to appear" should operate differently. Finally, the predecessor to today's "notice to appear" required the government to specify the place and time for the alien's hearing "in the order to show cause or otherwise." § 1252(a)(2)(A). The phrase "or otherwise" has since disappeared, further suggesting that the required details must be included upfront to invoke the stop-time rule. Indeed, that is how the government itself initially read the statute. The year after Congress adopted IIRIRA, in the preamble to a proposed rule implementing these provisions, the government acknowledged that "the language of the amended Act indicat[es] that the time and place of the hearing must be on the Notice to Appear." 62 Fed. Reg. 449 (1997). Pp. 165–169.

(c) The government claims that not knowing hearing officers' availability when it initiates removal proceedings makes it difficult to produce compliant notices. It also claims that it makes little sense to require time and place information in a notice to appear when that information may be later changed. Besides, the government stresses, its own administrative regulations have always authorized its current practice. But on the government's account, it would be free to send a person who is not from this country—someone who may be unfamiliar with English and the habits of American bureaucracies—a series of letters over the course of weeks, months, maybe years, each containing a new morsel of vital information. Congress could reasonably have wished to foreclose that possibility. And ultimately, pleas of administrative inconvenience never "justify departing from the statute's clear text." *Pereira*, 585 U. S., at 217. The modest threshold Congress provided to invoke the stop-time rule is clear from the text and must be complied with here. Pp. 169–172.

789 Fed. Appx. 523, reversed.

GORSUCH, J., delivered the opinion of the Court, in which THOMAS, BREYER, SOTOMAYOR, KAGAN, and BARRETT, JJ., joined. KAVANAUGH, J., filed a dissenting opinion, in which ROBERTS, C. J., and ALITO, J., joined, *post*, p. 172.

David J. Zimmer argued the cause for petitioner. With him on the briefs were *Gerard J. Cedrone* and *Benjamin Hayes.*

Anthony A. Yang argued the cause for respondent. With him on the brief were *Acting Solicitor General Wall*, *Acting Assistant Attorney General Clark*, *Deputy Solicitor General Kneedler*, *Donald E. Keener*, *John W. Blakeley*, and *Patrick J. Glen.**

JUSTICE GORSUCH delivered the opinion of the Court.

Anyone who has applied for a passport, filed for Social Security benefits, or sought a license understands the government's affinity for forms. Make a mistake or skip a page? Go back and try again, sometimes with a penalty for the trouble. But it turns out the federal government finds some of its forms frustrating too. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), 110 Stat. 3009–546, requires the government to serve "a no-

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*Briefs of *amici curiae* urging reversal were filed for the American Immigration Lawyers Association et al. by *Holly L. Henderson-Fisher* and *David W. Foster*; for the National Immigrant Justice Center by *Zachary C. Schauf* and *Charles Roth*; and for Thirty-three Former Immigration Judges et al. by *Richard W. Mark* and *Amer S. Ahmed.*

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

tice to appear" on individuals it wishes to remove from this country. At first blush, a notice to appear might seem to be just that—a single document containing all the information an individual needs to know about his removal hearing. But, the government says, supplying so much information in a single form is too taxing. It needs more flexibility, allowing its officials to provide information in separate mailings (as many as they wish) over time (as long as they find convenient). The question for us is whether the law Congress adopted tolerates the government's preferred practice.

I

For more than a century, Congress has afforded the Attorney General (or other executive officials) discretion to allow otherwise removable aliens to remain in the country. An alien seeking to establish his eligibility for that kind of discretionary relief, however, must demonstrate a number of things. A nonpermanent resident, for example, must show that his removal would cause an "exceptional and extremely unusual hardship" to close relatives who are U. S. citizens or lawful permanent residents; that he is of good moral character; that he has not been convicted of certain crimes; and that he has been continuously present in the country for at least 10 years. 8 U. S. C. § 1229b(b)(1).

The last item on this list lies at the crux of this case. Originally, an alien continued to accrue time toward the presence requirement during the pendency of his removal proceedings. With time, though, some came to question this practice, arguing that it gave immigrants an undue incentive to delay things. See, *e.g., In re Cisneros-Gonzales*, 23 I. & N. Dec. 668, 670–671 (BIA 2004). In IIRIRA, Congress responded to these concerns with a new "stop-time" rule. Under the statute's terms, "any period of continuous . . . presence in the United States shall be deemed to end . . . when the alien is served a notice to appear." § 1229b(d)(1).

All of which invites the question: What qualifies as a notice to appear sufficient to trigger the stop-time rule? IIRIRA defines a notice to appear as "written notice . . . specifying" several things. § 1229(a)(1). These include the nature of the proceedings against the alien, the legal authority for the proceedings, the charges against the alien, the fact that the alien may be represented by counsel, the time and place at which the proceedings will be held, and the consequences of failing to appear. See *ibid.*

This seemingly simple rule has generated outsized controversy. Initially, the dispute focused on the government's practice of issuing documents labeled notices to appear that failed to include the time and place for the alien's removal hearing. The government argued these documents were sufficient to trigger the stop-time rule. It insisted that proceeding this way served an important governmental interest too: If it waited to issue notices until the calendars of its hearing officers became clear, aliens would accrue too much time toward the presence requirement. Ultimately, however, this Court rejected the government's practice in *Pereira* v. *Sessions*, 585 U. S. 198 (2018). We explained that, in IIRIRA, Congress took pains to describe exactly what the government had to include in a notice to appear, and that the time and place of the hearing were among them. *Id.*, at 209. The government was not free to short-circuit the stop-time rule by sending notices to appear that omitted statutorily required information. *Id.*, at 212.

Today's case represents the next chapter in the same story. Perhaps the government could have responded to *Pereira* by issuing notices to appear with all the information § 1229(a)(1) requires—and then amending the time or place information if circumstances required it. After all, in the very next statutory subsection, § 1229(a)(2), Congress expressly contemplated that possibility. But, at least in cases like ours, it seems the government has chosen instead to continue down the same old path. Here, the government sent Mr. Niz-Chavez one document containing the charges against him. Then, two months later, it sent a second document with the time and place of his hearing. In light of *Pereira*, the government now concedes the first document isn't enough to trigger the stop-time rule. Still, the government submits, the second document does the trick. On its view, a "notice to appear" is complete and the stop-time rule kicks in whenever it finishes delivering all the statutorily prescribed information. The government says it needs this kind of flexibility to send information piecemeal. It even suggests it should be allowed to spread the statutorily mandated information over as many documents and as much time as it wishes.

Some circuits have accepted the government's notice-by-installment theory. Others, however, have held that the government must issue a single and comprehensive notice before it can trigger the stop-time rule. We agreed to hear this case, *Niz-Chavez* v. *Barr*, 789 Fed. Appx. 523 (CA6 2019), to resolve the conflict, 590 U. S. 978 (2020).

II

When called on to resolve a dispute over a statute's meaning, this Court normally seeks to afford the law's terms their ordinary meaning at the time Congress adopted them. See, *e. g.*, *Wisconsin Central Ltd.* v. *United States*, 585 U. S. 274, 277 (2018). The people who come before us are entitled, as well, to have independent judges exhaust "all the textual and structural clues" bearing on that meaning. *Id.*, at 283. When exhausting those clues enables us to resolve the interpretive question put to us, our "sole function" is to apply the law as we find it, *Lamie* v. *United States Trustee*, 540 U. S. 526, 534 (2004) (internal quotation marks omitted), not defer to some conflicting reading the government might advance.

A

In this case, our interpretive task begins with two statutory provisions we have already touched on. The first, § 1229b(d)(1), states that the stop-time rule is triggered "when the alien is served a notice to appear under section

1229(a)." In turn, § 1229(a)(1) explains that "written notice (in this section referred to as a 'notice to appear') shall be given . . . to the alien . . . specifying" the time and place of his hearing and all the other items we noted above. Almost immediately, these provisions pose the government with a problem. To trigger the stop-time rule, the government must serve "a" notice containing all the information Congress has specified. To an ordinary reader—both in 1996 and today—"a" notice would seem to suggest just that: "a" single document containing the required information, not a mishmash of pieces with some assembly required.

Nor is the government's response (echoed by the dissent) entirely satisfying. The government submits that § 1229(a)(1) defines the term "notice to appear" as "written notice"—and then says it's obvious "written notice" can come by means of one document or many. See *post,* at 178 (opinion of KAVANAUGH, J.). But this argument doesn't quite track. Section 1229(a)(1) says that "written notice" is "referred to as a 'notice to appear.'" The singular article "a" thus falls outside the defined term ("notice to appear") and modifies the entire definition. So even if we were to do exactly as the government suggests and substitute "written notice" for "notice to appear," the law would still stubbornly require "a" written notice containing all the required information.

Admittedly, a lot here turns on a small word. In the view of some, too much. The dissent urges us to overlook the fact Congress placed the singular article "a" *outside* the defined term in § 1229(a)(1). On its view, we should read the statute as if the article came *inside* the defined term. *Post,* at 178–179. But that's not how the law is written, and the dissent never explains what authority might allow us to undertake the statutory rearranging it advocates.[1] Nor does

[1] The closest the dissent comes is when it alludes to *United States Nat. Bank of Ore.* v. *Independent Ins. Agents of America, Inc.,* 508 U. S. 439 (1993). But that "unusual" case turned on the "scrivener's error" doc-

any of this help when it comes to § 1229b(d)(1), the provision that actually creates the stop-time rule, for that statute separately speaks of "a" notice to appear. Not once but twice it seems Congress contemplated "a" single document.

Perhaps recognizing this much, the government and dissent pivot and focus their efforts in a different direction. Now, they remind us that "[t]he indefinite article 'a' is often used to refer to something that may be provided in more than one installment." Brief in Opposition 10; see also *post*, at 181–182. The government observes, for example, that a writer can publish "a" story serially, or an author may deliver "a" manuscript chapter by chapter. Brief in Opposition 10. The dissent offers its own illustrations, highlighting that "a job application" and "a contract" also can be prepared in parts. *Post*, at 181. So even if IIRIRA speaks repeatedly of "a" notice to appear, the government and dissent contend, it remains possible that Congress meant to allow that notice to come over time and in pieces.

The trouble with this response is that everyone admits language doesn't always work this way. To build on an illustration we used in *Pereira*, someone who agrees to buy "a car" would hardly expect to receive the chassis today, wheels next week, and an engine to follow. 585 U. S., at 213; see *post*, at 181. At best, then, all of the competing examples the government and dissent supply do no more than demonstrate context matters. And here at least, it turns out that context does little to alter first impressions.

Start with customary usage. Normally, indefinite articles (like "a" or "an") precede *countable* nouns. The examples above illustrate the point: While you might say "she wrote a manuscript" or "he sent three job applications," no one

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trine, *id.*, at 462, which applies only in exceptional circumstances to obvious technical drafting errors. See, *e. g.*, *Lamie* v. *United States Trustee*, 540 U. S. 526, 538 (2004); A. Scalia & B. Garner, Reading Law 237–238 (2012). Nobody (the dissent included) contends the conditions required for that doctrine's application exist here.

would say "she wrote manuscript" or "he sent job application." See The Chicago Manual of Style § 5.7, p. 227 (17th ed. 2017); see also R. Huddleston & G. Pullum, The Cambridge Grammar of the English Language § 3.1, p. 334 (2002). By contrast, *noncountable* nouns—including abstractions like "cowardice" or "fun"—"almost never take indefinite articles." The Chicago Manual of Style § 5.7, at 227; see also Huddleston, *supra*, § 3.1, at 334. After all, few would speak of "a cowardice" or "three funs."

These customs matter because the key term before us (notice) can refer to *either* a countable object ("a notice," "three notices") *or* a noncountable abstraction ("sufficient notice," "proper notice"). Congress's decision to use the indefinite article "a" thus supplies some evidence that it used the term in the first of these senses—as a discrete, countable thing. All of which suggests that the government must issue a single statutorily compliant document to trigger the stop-time rule. If IIRIRA had meant to endow the government with the flexibility it supposes, we would have expected the law to use "notice" in its noncountable sense. A statute like that would have said the stop-time rule applies after the government provides "notice" (or perhaps "sufficient notice") of the mandated information—indicating an indifference about whether notice should come all at once or by installment.

Of course this is just a clue. Sometimes Congress's statutes stray a good way from ordinary English. Sometimes, too, Congress chooses to endow seemingly familiar words with specialized definitions. But until and unless someone points to evidence suggesting otherwise, affected individuals and courts alike are entitled to assume statutory terms bear their ordinary meaning. And when it comes to discerning the ordinary meaning of words, there are perhaps few better places to start than the rules governing their usage.

Nor is this the only contextual clue before us. A notice to appear serves as the basis for commencing a grave legal proceeding. As the government has acknowledged, it is "like an indictment in a criminal case [or] a complaint in a civil case." Tr. of Oral Arg. in *Pereira* v. *Sessions*, O. T. 2017, No. 17–459, p. 39. The rules Congress has adopted to describe those other case-initiating pleadings often use the indefinite article to refer to a single document—an indictment, an information, or a civil complaint. See, *e.g.*, Fed. Rules Crim. Proc. 7(a), (c)(1), (e); Fed. Rule Civ. Proc. 3. In each case, the aim is to supply an affected party with a single document highlighting certain salient features of the proceedings against him. No one contends those documents may be shattered into bits, so that the government might, for example, charge a defendant in "an indictment" issued piece by piece over months or years. And it is unclear why we should suppose Congress meant for *this* case-initiating document to be different.[2]

The government resists this conclusion by invoking the Dictionary Act. When reading the U. S. Code, that Act tells us to assume "words importing the singular include and apply to several persons, parties, or things," unless statutory context indicates otherwise. 1 U. S. C. § 1. But this instruction has no application here. The Dictionary Act does not transform every use of the singular "a" into the plural "several." Instead, it tells us only that a statute using the singular "a" can apply to multiple persons, parties, or things. So the Act allows the government to send multiple notices to appear to multiple people, but it does not mean a notice to appear can consist of multiple documents.

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[2] The question is not, as the dissent seems to think, whether certain other charging documents do or do not require "calendaring" information. *Post*, at 182. Instead, our point is that each case-initiating document must contain the catalogue of information Congress has said the defendant or respondent is entitled to receive in that document—and no one thinks this information may be provided by installment. Nor does anyone dispute that Congress has said *this* case-initiating document must include (among other things) "[t]he time and place at which the proceedings will be held." 8 U. S. C. § 1229(a)(1)(G)(i).

Think of the problem this way: Suppose a statute made it a crime to vandalize "a" bank. Under the Dictionary Act, someone who vandalizes five banks could not avoid prosecution on the ground that he vandalized more than one. Now take a hypothetical closer to this case—a person who vandalizes some constituent part of a not-yet-completed bank (say, a stack of blocks on a construction site). Did he vandalize "a" bank? Answering that question depends on whether Congress defined "bank" to include its constituent parts, not on what the Dictionary Act says about the word "a."

B

To the extent any doubt remains about the meaning of the two specific statutes before us, we believe a wider look at IIRIRA's statutory structure and history enough to resolve it.

Take 8 U. S. C. § 1229(e)(1). That nearby provision sets forth special rules the government must follow when it seizes an alien at a sensitive location like a domestic violence shelter. In circumstances like these, Congress has instructed, "*the* Notice to Appear shall include a statement that" the government has complied with certain special requirements. *Ibid.* (emphasis added). Here again we encounter an article coupled with a singular noun ("the Notice"), a combination that once more seems to suggest a discrete document. Nor would the rest of § 1229(e)(1)'s terms make much sense on the government's account. If a notice to appear were a collection of information rather than a single written instrument, Congress would have had no need to insist on "includ[ing]" a particular statement in "the Notice to Appear." *Ibid.* More simply, it could have required the government to provide the information, full stop.

Once more, too, the government's response is less than satisfying. It suggests that the "Notice to Appear" discussed in § 1229(e)(1) isn't the same "notice to appear" described in § 1229(a)(1). No, the government says, by using capital letters in § 1229(e)(1) Congress sought to prescribe only what must be included in a Department of Homeland Security form entitled "Notice to Appear." But that much is hard to see. Section 1229(e)(1)'s discussion about what must be included in a notice to appear resides just a couple doors down from the provisions at issue before us, and it seems pretty clearly to modify those provisions in certain special circumstances. Meanwhile, the Department of Homeland Security form exists only by regulation and the department can change that regulation any time. Maybe, too, there is another explanation for the capital letters. Maybe they simply reflect how clear it was by the time Congress added § 1229(e)(1) in 2006—a decade after IIRIRA's adoption—that a notice to appear *is* a specific document in which the government can (and must) "include" the required certification.[3]

Next comes § 1229a(b)(7). It states that an alien who fails to appear for his removal proceedings is typically ineligible for relief if, "at the time of the notice described in paragraph (1) or (2) of section 1229(a)," the government supplies oral as well as written notice of the time and place of the removal proceedings and the consequences of failing to appear. § 1229a(b)(7). Again, the law seems to speak of the charging document as a discrete thing, using a definite article with a singular noun ("the notice"). And by speaking of "the notice" being served at a particular "time" the statute seems to equate service with a discrete moment, not an ongoing endeavor. To be sure, one could reply (as the government and dissent do) that "the time of the notice" refers to the

[3] Even the dissent declines to endorse the government's interpretation of § 1229(e)(1). Instead, it merely repeats the anodyne point that singular articles are sometimes used "with a thing delivered in constituent installments." *Post*, at 185. But that observation cuts little ice in this context for reasons we've already explored in Part II–A, *supra*. The dissent also fails to explain why Congress would have gone to the trouble of insisting in § 1229(e)(1) that "the Notice to Appear" contain additional information if it really meant only to require the government to provide that information whenever and however it pleases.

moment when the final installment arrives. See *post,* at 184–185. But if that's what Congress meant, this was surely an awkward way of saying so.

Section 1229(a)(2) adds to the government's growing list of problems. That provision applies when officials wish to change the alien's hearing date. It requires the government to serve "*a* written notice" specifying "the new time or place of the proceedings" and the "consequences . . . of failing . . . to attend such proceedings." § 1229(a)(2)(A) (emphasis added). The government does not argue *this* statute contemplates multiple documents. And if that's the case—if § 1229(a)(2) anticipates a single document—it's not exactly obvious why the phrase "a notice to appear" found next door in § 1229(a)(1) should operate differently.[4]

Finally, there is the statute's history and the government's initial response to it. Before IIRIRA, the government began removal proceedings by issuing an "order to show cause"—the predecessor of today's "notice to appear." Back then, the law expressly authorized the government to specify the place and time for an alien's hearing "in the order to show cause *or otherwise.*" § 1252b(a)(2)(A) (1994 ed.) (emphasis added). IIRIRA changed all that. It changed the name of the charging document—and it changed the rules governing the document's contents. Now time and place information must be included in a notice to appear, not "or otherwise." Nor was the alteration an insensible one. Recall that IIRIRA *also* created the stop-time rule and pegged it to the service of a notice to appear. A rational Congress

[4] The dissent seeks to raise the cudgel on the government's behalf, arguing that § 1229(a)(2) *does* permit multiple documents. *Post,* at 185–186. But on the dissent's reading, the statute would authorize the government to (1) hand an alien one document with a new time for his hearing, (2) follow up at its leisure with a second document containing the new hearing date, and (3) add a third document later still explaining the consequences of failing to appear. To state the theory may be enough to explain why the government declines to press it.

easily could have thought that measuring an alien's period of residence against the service date of a discrete document was preferable to trying to measure it against a constellation of moving pieces.

Notably, too, the year after Congress adopted IIRIRA the government proposed a rule to create "the Notice to Appear, Form I–862, replacing the Order to Show Cause, Form I–221." See 62 Fed. Reg. 449 (1997). In the preamble to its proposed rule, the government expressly acknowledged that "the language of the amended Act indicat[es] that *the time and place of the hearing must be on the Notice to Appear.*" *Ibid.* (emphasis added). We don't mention this, as the dissent supposes, in support of some argument that "post-enactment regulatory history" should overcome "the otherwise-best interpretation of the statute." *Post*, at 187. Rather, we mention it only to observe that even the party now urging otherwise once read the statute just as we do. To the extent that dissent accuses us of being "literalists," it seems the literalists once infiltrated the Executive Branch too. *Post*, at 181.[5]

Perhaps, though, what's really going on here has nothing to do with labels like that. Perhaps there's a simpler explanation. Perhaps when Congress adopted IIRIRA everyone understood that it required a single fully compliant document to trigger the stop-time rule. Perhaps the government has resisted the law's demands only because they leave its officials with less flexibility than they once had. Regardless, when interpreting this or any statute, we do not aim for "literal" interpretations, but neither do we seek to indulge efforts to endow the Executive Branch with maximum bureaucratic flexibility. We simply seek the law's ordinary

[5] It makes no difference either that the Executive Branch tempered its candor by promising later in its proposed rule to provide a single notice only "where practicable." *Post*, at 187. That the government let slip (at least once) that it understood the plain import of IIRIRA's revisions remains telling.

meaning. Today, a long parade of textual and contextual clues persuade us of this statute's ordinary meaning. If, in the process of discerning that meaning, we happen to consult grammar and dictionary definitions—along with statutory structure and history—we do so because the rules that govern language often inform how ordinary people understand the rules that govern them.

III

Ultimately, the government is forced to abandon any pretense of interpreting the statute's terms and retreat to policy arguments and pleas for deference. The government admits that producing compliant notices has proved taxing over time. It may not know the availability of hearing officers' schedules at the time it would prefer to initiate proceedings against aliens. Nor, the government contends, does it make sense to include time and place information in a notice to appear when the statute allows it to amend the time and place by serving a supplemental notice. Beyond all that, the government stresses, its own (current) regulations authorize its practice. The dissent expands on all these points at length. *Post,* at 187–192. But as this Court has long made plain, pleas of administrative inconvenience and self-serving regulations never "justify departing from the statute's clear text." *Pereira*, 585 U. S., at 217.

Besides, even viewed in isolation the government's policy arguments are hardly unassailable. If the government finds filling out forms a chore, it has good company. The world is awash in forms, and rarely do agencies afford individuals the same latitude in completing them that the government seeks for itself today. Take this example: Asylum applicants must use a 12-page form and comply with 14 single-spaced pages of instructions. Failure to do so properly risks having an application returned, losing any chance of relief, or even criminal penalties. DHS, I–589, Application for Asylum and for Withholding of Removal: Instructions, pp. 5, 14; DHS, I–

589 Form. Nor is it obvious the government faces an insurmountable chore here. As we have seen, once the government serves a compliant notice to appear, IIRIRA permits it to send a supplemental notice amending the time and place of an alien's hearing if logistics require a change. See 8 U. S. C. § 1229(a)(2).

To be sure, the government seeks to leverage this statutory feature to its further advantage. Because it may issue a supplemental notice changing the time and place of the alien's hearing, the government reasons, requiring an initial and fully compliant notice serves no meaningful purpose. But that much does not follow. True, the government can change the time and place if it must. As written, though, the statute allows the government to invoke the stop-time rule only if it furnishes the alien with a single compliant document explaining what it intends to do and when. We are no more entitled to denigrate this modest statutory promise as some empty formality than we might dismiss as pointless the rules and statutes governing the contents of civil complaints or criminal indictments.

Just consider the alternative. On the government's account, it would be free to send a person who is not from this country—someone who may be unfamiliar with English and the habits of American bureaucracies—a series of letters. These might trail in over the course of weeks, months, maybe years, each containing a new morsel of vital information. All of which the individual alien would have to save and compile in order to prepare for a removal hearing. And as soon as the last letter arrives, the alien's ability to accrue time toward the residency requirement would be suspended indefinitely. Nor is this a wild hypothetical. At oral argument the government contended "[t]here's nothing that textually limits us" from proceeding in just this fashion. Tr. of Oral Arg. 47.

The dissent's policy arguments stretch even further than the government's. It suggests that the best way to help aliens is to rule against the alien before us. *Post*, at 175–

176, 187–192. Unsurprisingly, however, neither Mr. Niz-Chavez nor any of the immigration policy advocates who have filed *amicus* briefs in this Court share that assessment. And how does the dissent arrive at its judgment anyway? It speculates the government might respond to our decision by disadvantaging aliens in one of two ways. First, it might ambush aliens with last-minute notices. See *post*, at 190. Alternatively, it might issue compliant notices that trigger the stop-time rule as early as possible, only to amend the time-and-place information shortly before the hearing date. *Ibid.* But the dissent's preferred construction does nothing to foreclose either of these possibilities. And even the dissent seems to think another outcome is more likely yet: It says the government may continue serving notices without time and place information in the first instance, only to trigger the stop-time rule later by providing fully compliant notices with time and place information once a hearing date is available. *Post*, at 189. Nor does the dissent question that this result would help—and certainly not hurt—most aliens.

In the end, though, all this speculation is beside the point. The dissent tries to predict how the government will react to a ruling that requires it to follow the law and then proceeds to assess the resulting "costs" and "benefits." *Post*, at 188, 191–192. But that kind of raw consequentialist calculation plays no role in our decision. Instead, when it comes to the policy arguments championed by the parties and the dissent alike, our points are simple: As usual, there are (at least) two sides to the policy questions before us; a rational Congress could reach the policy judgment the statutory text suggests it did; and no amount of policy-talk can overcome a plain statutory command. Our only job today is to give the law's terms their ordinary meaning and, in that small way, ensure the federal government does not exceed its statutory license. Interpreting the phrase "a notice to appear" to require a single notice—rather than 2 or 20 documents—does just that.

* * *

At one level, today's dispute may seem semantic, focused on a single word, a small one at that. But words are how the law constrains power. In this case, the law's terms ensure that, when the federal government seeks a procedural advantage against an individual, it will at least supply him with a single and reasonably comprehensive statement of the nature of the proceedings against him. If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them.

The judgment of the Court of Appeals for the Sixth Circuit is

Reversed.

JUSTICE KAVANAUGH, with whom THE CHIEF JUSTICE and JUSTICE ALITO join, dissenting.

Agusto Niz-Chavez is a native and citizen of Guatemala. In 2005, Niz-Chavez unlawfully entered the United States through the southern border and eventually settled in Detroit. In 2013, the Government initiated removal proceedings against Niz-Chavez. After the removal hearings, an Immigration Judge ordered Niz-Chavez to either voluntarily depart from the United States within 30 days or else be removed to Guatemala.

The Court today casts aside the Immigration Judge's order and allows Niz-Chavez to go back to immigration court to seek cancellation of removal. Why? The Court says that Niz-Chavez did not receive proper notice of his removal proceedings because he received notice in two documents rather than one. The Court so holds even though Niz-Chavez (i) received all the statutorily required information about his removal proceedings, including the time and place of the removal hearing; (ii) was not prejudiced in any way by receiving notice in two documents rather than one; and (iii) in fact appeared with counsel at his scheduled removal hearing.

The Court's decision contravenes Congress's detailed requirements for a noncitizen to obtain cancellation of removal. When the Government seeks to remove a noncitizen such as Niz-Chavez who is unlawfully in the country, it begins the process by sending the noncitizen a notice to appear for removal proceedings. 8 U. S. C. § 1229(a)(1). In the subsequent removal proceedings before an immigration judge, the noncitizen may contest the grounds for removal and may also ask the immigration judge to grant various forms of relief, including discretionary cancellation of removal. §§ 1229b(a), (b)(1).

A noncitizen's eligibility for cancellation of removal depends in part on when the noncitizen received notice of the removal proceeding. To be eligible, a noncitizen who is a nonpermanent resident must have been continuously present in the United States for at least 10 years. § 1229b(b)(1)(A). The 10-year clock stops, however, when the noncitizen is served "a notice to appear" for the removal proceeding. § 1229b(d)(1).

Because service of a notice to appear stops the 10-year clock and may make the noncitizen ineligible for cancellation of removal, noncitizens who want to apply for cancellation of removal (and courts) must know what constitutes a notice to appear. Federal immigration law answers that question. The relevant statute defines a notice to appear as "written notice," which must be served in person or by mail and which provides certain required information, such as the alleged grounds for removal and the time and place of the removal hearing. § 1229(a)(1); see *Pereira* v. *Sessions*, 585 U. S. 198, 213–214 (2018) (§ 1229(a)(1) provides the definition of a notice to appear for purposes of the 10-year clock).

In this case, the United States commenced removal proceedings against Niz-Chavez in 2013—eight years after he entered the United States. The Government served two documents on Niz-Chavez. In March 2013, Niz-Chavez received the first document, which notified him that he was being charged as removable because he was unlawfully in the country. It explained that he would have to appear for a removal hearing at the immigration court in Detroit at a time to be set in the future. Two months later, he received the second document, which notified him that the removal hearing would occur at the immigration court in Detroit on June 25, 2013, at 8:30 a.m. The two documents together included all the statutorily required information. See § 1229(a)(1). Niz-Chavez appeared with counsel at the scheduled hearing on June 25, 2013.

At the hearing, Niz-Chavez conceded that he was removable because he was unlawfully in the country. Moreover, Niz-Chavez did not request cancellation of removal or suggest that he was eligible for cancellation of removal, presumably because he received the notice to appear long before he had accrued 10 years of continuous presence in the United States. After further hearings, an Immigration Judge found Niz-Chavez removable as charged and ordered Niz-Chavez to either voluntarily depart from the United States within 30 days or else be removed to Guatemala.

Niz-Chavez now argues that he in fact should be eligible for cancellation of removal. He emphasizes that the continuous-presence clock stops upon service of "*a* notice to appear." § 1229b(d)(1). That language, according to Niz-Chavez, means that, to stop the 10-year clock, the Government must provide all the required information *in one document*, rather than two. The Government responds that the statute includes no such requirement and that the Government may serve a notice to appear *in two documents*, with the time and place of the hearing coming in the second document and the 10-year clock stopping then.

The Court today agrees with Niz-Chavez that, in order to stop the 10-year clock, the Government must provide written notice in one document, not two. I find the Court's conclusion rather perplexing as a matter of statutory interpretation and common sense. I therefore respectfully dissent.

I

A

This is not the Court's first case involving a notice to appear for removal proceedings. In *Pereira* v. *Sessions*, the Court held that a notice that does not provide the time and place of the hearing does not stop the 10-year continuous-presence clock. 585 U. S. 198, 202 (2018). Before *Pereira*, the Government (in some Circuits) could send two documents as it did in this case and stop the clock when it served the first, incomplete document. See *id.*, at 207–209, and n. 4. In the wake of *Pereira*, however, service of the first document no longer stops the clock. The clock does not stop until the Government also provides the time and place of the hearing.

In *Pereira*, the Court did not address the distinct question whether the Government may serve a notice to appear in two documents instead of one, with the time and place of the hearing coming in the second document and the clock then stopping upon service of the second document. We must decide that question here.

After *Pereira*, why would the Government still provide notice in two documents instead of one comprehensive document? Simple. When the Government wants to inform the noncitizen that it is initiating removal proceedings, the Government may not yet know exactly when the hearing will occur. So the Government sometimes will first inform the noncitizen of the charges, and only later provide the exact time and place of the hearing.

After *Pereira*, the Government gains no advantage by providing notice in two documents, because the 10-year continuous-presence clock does not stop until the noncitizen has also been served the statutorily required time and place information. See *id.*, at 202. If anyone gains an advantage from two-document notice after *Pereira*, it is noncitizens. They can learn of the removal proceedings and begin preparing a defense even before they receive notice of the time and place of the hearing. So receiving notice in two documents can benefit noncitizens.

Even though receiving notice in two documents would benefit noncitizens as a group by giving them more time to prepare for hearings, Niz-Chavez understandably seeks to advance his own interests in not having the 10-year clock stopped in his individual case. Niz-Chavez says that to stop the 10-year clock, the Government must provide a single document with all the statutorily required information, because the statute requires "*a* notice to appear."

B

The Court agrees with Niz-Chavez, resting its conclusion almost entirely on the word "a" in the statutory phrase "a notice to appear." As the Court notes, Congress provided that the 10-year continuous-presence clock stops when the noncitizen is served "a notice to appear" for removal proceedings. 8 U. S. C. § 1229b(d)(1).[1] The Court says that the article "a" means that the 10-year continuous-presence clock stops only if the Government serves a single document with all the required information to initiate the removal proceedings, not two documents with all the required information. In my respectful view, the Court's textual interpretation contains two independent flaws, either of which suffices to defeat the Court's conclusion.

First, the Court's analysis disregards the statutory definition of a notice to appear.

When a statute defines a term, we ordinarily follow the statutory definition. *Digital Realty Trust, Inc.* v. *Somers*, 583 U. S. 149, 160 (2018); *Burgess* v. *United States*, 553 U. S.

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[1] As relevant here, the statute provides: "For purposes of this section, any period of continuous residence or continuous physical presence in the United States shall be deemed to end . . . when the alien is served a notice to appear under section 1229(a) of this title." § 1229b(d)(1).

124, 129–130 (2008). Here, the statute defines a notice to appear in a somewhat oddly worded way. The definition is located in the statutory provision that specifies how the Government must initiate removal proceedings. That provision states: "*written notice (in this section referred to as a 'notice to appear')* shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying" 10 categories of information relevant to the removal proceedings. § 1229(a)(1) (emphasis added); see also *Pereira*, 585 U. S., at 213–214 (§ 1229(a)(1) provides the definition of a notice to appear for purposes of the 10-year clock).[2]

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[2] Section 1229(a)(1) provides: "In removal proceedings under section 1229a of this title, written notice (in this section referred to as a 'notice to appear') shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying the following:

"(A) The nature of the proceedings against the alien.

"(B) The legal authority under which the proceedings are conducted.

"(C) The acts or conduct alleged to be in violation of law.

"(D) The charges against the alien and the statutory provisions alleged to have been violated.

"(E) The alien may be represented by counsel and the alien will be provided (i) a period of time to secure counsel under subsection (b)(1) and (ii) a current list of counsel prepared under subsection (b)(2).

"(F)(i) The requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting proceedings under section 1229a of this title.

"(ii) The requirement that the alien must provide the Attorney General immediately with a written record of any change of the alien's address or telephone number.

"(iii) The consequences under section 1229a(b)(5) of this title of failure to provide address and telephone information pursuant to this subparagraph.

"(G)(i) The time and place at which the proceedings will be held.

"(ii) The consequences under section 1229a(b)(5) of this title of the failure, except under exceptional circumstances, to appear at such proceedings."

In other words, the statute provides that the 10-year continuous-presence clock stops upon service of "a notice to appear," and then goes on to define a notice to appear as "written notice." The statute nowhere says that written notice must be provided in a single document. Rather, the statute lists three essential requirements for the Government to notify a noncitizen of removal proceedings: (i) the notice must be "written notice"; (ii) it must be "given in person," if practicable, or else by mail; and (iii) the notice must include the required information, such as the grounds for removal and the time and place of the hearing. § 1229(a)(1). Nothing more. But the Court today nonetheless imposes a fourth, atextual single-document requirement for the notice to stop the 10-year clock.

If Congress actually wanted to require a single document to stop the 10-year clock, Congress easily could have (and surely would have) said so. After all, the statute supplies comprehensive and detailed instructions about how the Government must serve a notice to appear and what information must be included. But the statute never says that all the required information must appear in a single document.

Notice delivered in two installments can readily satisfy all the requirements of a notice to appear. Consider the notice served on Niz-Chavez in this case. It was written notice. It was properly served. It contained all the statutorily required information, including the time and place of the hearing. The statute contemplates nothing more of a notice to appear.

Instead of applying that clear statutory definition of a notice to appear as written notice, the Court dismisses the definition's relevance on a novel basis not raised by Niz-Chavez, not advanced by any *amicus* brief, and not adopted by any lower courts—the placement of a quotation mark. The Court reasons that the quotation marks in the statutory definition appear around only the words "notice to appear," rather than around "*a* notice to appear." On that basis, the

Court insists that the phrase "written notice" defines only the three words "notice to appear"—without the "a." And substituting "written notice" for "notice to appear" in the statutory provision addressing the 10-year clock would still require "a" written notice, which the Court interprets to mean a single document.

According to the Court, Congress thus imposed a single-document requirement for stopping the 10-year clock not by actually saying that a single document is required, but rather by placing quotation marks around the words *a "notice to appear"* rather than "*a notice to appear*" in the statutory definition. There is a good reason that Niz-Chavez did not raise this argument, that no *amicus* brief advanced this argument, and that no court has adopted it. The Court's theory is mistaken and implausible. If Congress wanted to require a single document in order to stop the 10-year clock, it is hard to imagine a more obscure way of doing so. Although "the meaning of a statute will typically heed the commands of its punctuation," "a purported plain-meaning analysis based only on punctuation is necessarily incomplete and runs the risk of distorting a statute's true meaning." *United States Nat. Bank of Ore.* v. *Independent Ins. Agents of America, Inc.*, 508 U. S. 439, 454 (1993). The Court has declined to rely on "the deployment of quotation marks" when "all of the other evidence from the statute points the other way." *Id.*, at 455.

So it is here. The Court's quotation-mark theory contravenes the statutory text and structure. The text and structure make clear that the notice that initiates removal proceedings is the same notice that stops the 10-year clock. See §§ 1229(a)(1), 1229b(d)(1). But the Court's interpretation treats them as different by imposing different requirements for a notice that stops the 10-year clock and for a notice that initiates removal proceedings. To reiterate, to initiate removal proceedings, the Government must provide the noncitizen with "written notice." The Court does not dispute (and cannot dispute) that the Government can initiate removal proceedings by providing written notice in more than one document, so long as the notice encompasses all the statutorily required information. Nonetheless, for that written notice to also stop the 10-year clock, the Court says that the written notice must be provided in a single document rather than two documents because the 10-year clock provision requires "*a* notice to appear." Stated otherwise, under the Court's novel theory, the Government may use two documents to initiate removal proceedings, but the Government must use a single document if it also wants to stop the continuous-presence clock—even though Congress explicitly linked the notice that stops the clock to the notice that initiates removal proceedings. Put simply, the Court's argument based on the placement of a quotation mark contravenes the straightforward statutory structure and makes little sense.

The Court's novel interpretation also creates another inconsistency. Section 1229a(b)(5) explains that a noncitizen who fails to attend a removal hearing may be removed in absentia if he had previously been provided with "written notice" under § 1229(a)(1). Under the Court's interpretation, it is hard to see why such notice would need to be provided in a single document—there are no dangling uses of "a" to latch onto in that provision. It makes no sense that two-document notice could justify removal in absentia but could not stop the continuous-presence clock.

In sum, the Court's theory for disregarding the statutory definition is both novel and unpersuasive. The Court's quotation-mark argument fails because it distorts the "statute's true meaning." *United States Nat. Bank of Ore.*, 508 U. S., at 454. When the statutory definition of a notice to appear as "written notice" is correctly applied, instead of sidestepped, it readily resolves what should have been a very simple statutory case.

Second, even if there were no definition in this statute and we therefore had to focus solely on the term "a notice to appear" in isolation, the Court's interpretation of that phrase would still fail.

Ordinary meaning and literal meaning are two different things. And judges interpreting statutes should follow ordinary meaning, not literal meaning. See, *e. g., McBoyle* v. *United States*, 283 U. S. 25, 26 (1931) (in ordinary speech, "vehicle" does not cover an aircraft, even though "etymologically it is possible to use the word" that way); see also A. Scalia, A Matter of Interpretation 24 (1997) (a "good textualist is not a literalist"). The Court here, however, relies heavily on literal meaning: The Court interprets the word "a" in the phrase "a notice to appear" to literally require the Government to serve one (and only one) document. In the Court's words, "a notice" requires " 'a' single document containing the required information." *Ante,* at 161.

As a matter of ordinary parlance, however, the word "a" is not a one-size-fits-all word. As relevant here, the word "a" is sometimes used to modify a single thing that must be delivered in one package, but it is sometimes used to modify a single thing that can be delivered in multiple installments, rather than in one installment. Context is critical to determine the proper meaning of "a" in a particular phrase. Consider some examples. A car dealership that promises to ship "a car" to a customer has not fulfilled its obligation if it sends the customer one car part at a time. By contrast, it is common to submit "a job application" by sending a resume first and then references as they are available. When the final reference arrives, the applicant has submitted "a job application." Similarly, an author might submit chapters of a novel to an editor one at a time, as they are ready. Upon submission of the final chapter, the author undoubtedly has submitted "a manuscript." "A contract" likewise can be "established by multiple documents." *Secretary of U. S. Air*

Force v. *Commemorative Air Force*, 585 F. 3d 895, 901 (CA6 2009). The list goes on.

As those examples demonstrate, and as the Court acknowledges, the article "a" can be perfectly consistent with delivery in installments. And in this case, the better reading of the article "a" is that it does not require delivery in only one installment. A notice to appear for a removal hearing is more like a job application, a manuscript, and a contract than it is like a car. A notice to appear conveys information, like a job application, a manuscript, and a contract. And unlike a car, a notice to appear is easy for the recipient to assemble from its constituent installments.

The Court prefers a different analogy. To buttress its interpretation, the Court analogizes the notice to appear to legal documents that initiate criminal cases, like indictments. The Court reasons that "an indictment" traditionally provides all the required information in a single document, so "a notice to appear" must do so as well. *Ante*, at 164.

But that analogy is misplaced. An indictment generally provides charging information. By contrast, a notice to appear provides charging information *and* logistical calendaring information that is not always knowable at the time of charging. As the Court said in *Pereira*, a notice to appear is more than just a charging document because it serves "another equally integral function: telling a noncitizen when and where to appear." See 585 U. S., at 212, n. 7. In other words, a notice to appear is akin to a charging document *plus* a calendaring document. It is therefore easy to understand why a notice to appear might require two installments while an indictment requires only one. The analogy to an indictment actually cuts strongly *against* the Court's interpretation.

In addition, interpreting "a notice to appear" to allow delivery in two documents makes much more sense in context here because it allows the Government to alert the noncitizen of the charges well before a time and place have been set for the hearing. That affords the noncitizen more time to prepare a defense. And a noncitizen suffers no prejudice from receiving notice in two documents rather than one, as Niz-Chavez's case amply demonstrates. In short, a noncitizen gains something and loses nothing meaningful from receiving all the information in two documents. (The same cannot be said for receiving a car in two installments, for example.)

The Court's interpretation, by contrast, spawns a litany of absurdities. For example, under the Court's interpretation, the 10-year clock does not stop if the noncitizen receives the two separate documents *on the same day but in different envelopes*. But the clock does stop if the noncitizen receives the two documents in one envelope. What sense does that make? Moreover, if a noncitizen receives a first document without a time and place and a second document with only the time and place, that does not stop the clock under the Court's rule. But if a noncitizen receives a first document with all the information including the time and place and then a second document with all the information and a *new* time and place, that first document does stop the clock under the Court's rule. What sense does that make?

Indeed, the Court deems Niz-Chavez to have never received proper notice of the hearing even though he received all the statutorily required information and *actually appeared with counsel at the hearing*. Again, what sense does that make?

The Court blames those absurdities on Congress and says that Congress would have chosen to omit the article "a" if it wanted to allow two documents. The Court's apparent theory is that Congress deliberately employed the word "a" to obliquely impose an additional procedural obligation on the Government when the Government initiates removal proceedings against a noncitizen and wants to stop the 10-year clock. That theory is no more plausible than the Court's first theory that Congress used the placement of a quotation mark to impose a new procedural obligation. Once again, if Congress wanted to require the Government to send a notice to appear in one document rather than two documents in order to stop the 10-year clock, Congress easily could have said so, and undoubtedly would have said so. But it did not. The bottom line is that this new single-document requirement comes from this Court, not Congress. The Court's attempt to deflect blame is unpersuasive.

In sum, the Court's interpretation of the statutory text is wrong for two independent reasons, either of which suffices to defeat the Court's conclusion. First, the statutory definition of a notice to appear as "written notice" establishes that "a notice to appear" can be delivered in two installments. Second, even if there were no statutory definition, the best reading of "a notice to appear" in this context is that the notice can be provided in two installments.

C

The Court seeks to support its textual analysis with additional arguments based on structure, statutory history, and post-enactment regulatory history. Those arguments do not help.

First, start with structure. The Court says that three other statutory provisions—§§ 1229(e)(1), 1229a(b)(7), and 1229(a)(2)—imply that a notice to appear is a single document. *Ante*, at 165–168. But none of the three provisions actually requires the Government to serve a notice to appear in a single document. Moreover, the language in all three provisions is consistent with a two-document notice to appear.

The first provision, § 1229(e)(1), addresses the Government's notice obligations when it seizes a noncitizen at a domestic violence shelter or other location as a precursor to removal proceedings. In those cases, § 1229(e)(1) says that "the Notice to Appear shall include" a statement that the Government has complied with certain protections for noncitizens. The Court says that the phrase "the Notice" implies a single document because it pairs an article with a singular noun. *Ante*, at 166–167. But the reference in § 1229(e)(1) to "the Notice to Appear" does not require or even contemplate a single document. Like the article "a," the article "the" can be used with a thing delivered in constituent installments—consider "the job application," "the manuscript," or "the contract." Section 1229(e)(1) simply requires the Government to include the necessary statement of compliance in one of the documents constituting the notice to appear.

The second provision, § 1229a(b)(7), concerns noncitizens who fail to appear at removal proceedings and are ordered removed in absentia. Section 1229a(b)(7) says that a noncitizen in that situation is ineligible for certain kinds of relief from removal for 10 years if the noncitizen was provided oral notice "at the time of" the written notice to appear. § 1229a(b)(7). The Court argues that the provision's reference to "the time of" the written notice implies that the written notice is necessarily delivered at one particular moment, and therefore in one single document. *Ante*, at 166–168. On the contrary, the reference in § 1229a(b)(7) to "the time of" the written notice is entirely consistent with two-document notice. Notice qualifies as "a notice to appear" only when it includes the time and place of the removal hearing. *Pereira*, 585 U. S., at 202, 208–209. So when the Government uses two documents to serve a notice to appear, "the time of" the written notice is the time when the noncitizen is served the second installment that provides the time and place of the hearing.

The third provision, § 1229(a)(2), supplies a procedure for changing the time or place of a removal hearing. It requires the Government to give a noncitizen "a written notice" of the new time and place. The Court concludes that the reference to "*a* written notice" requires a single document, and so "*a* notice to appear" must as well. *Ante,* at 167. As a practical matter, the Government may need only one document to change the time or place of the hearing. But the word "a" in the phrase "a written notice" does not *require* the Government to use a single document, just as the word "a" in the phrase "a notice to appear" does not. Section 1229(a)(2), like the other two provisions, is entirely consistent with the Government's reading of the statute.

Second, the Court also invokes statutory history to support its interpretation. But the statutory history does not advance the Court's argument. Before 1996, the immigration statute required the Government to serve an "order to show cause" rather than a notice to appear. 8 U. S. C. § 1252b(a)(1) (1994 ed.). Back then, the statute allowed the Government to notify a noncitizen of the time and place of the removal hearing either "in the order to show cause or otherwise." § 1252b(a)(2)(A) (1994 ed.). The pre-1996 statute similarly defined an order to show cause as "written notice"—a broad term that does not require one document. § 1252b(a)(1) (1994 ed.). In 1996, Congress made some significant changes. Congress replaced suspension of deportation with cancellation of removal. Illegal Immigration Reform and Immigrant Responsibility Act, §§ 304(a), 308(b)(7), 110 Stat. 3009–587, 3009–615 (codified at 8 U. S. C. § 1229b). Congress extended the continuous-presence requirement to 10 years for nonpermanent residents. 110 Stat. 3009–594 (codified at § 1229b(b)(1)(A)). Congress also changed the order to show cause to a notice to appear, and required the Government to provide the time and place information in that notice to appear. 110 Stat. 3009–588 (codified at § 1229(a)(1)(G)(i)). And Congress also provided for the first time that service of the notice to appear would stop the continuous-presence clock. 110 Stat. 3009–595 (codified at § 1229b(d)(1)).

But amid all those changes, Congress never required that a notice to appear include all the required information in a single document. The Court nonetheless speculates that a "rational Congress easily could have thought" it sensible to peg the end of the continuous-presence clock to a single document. *Ante*, at 167–168. Maybe so. But a rational Congress also could have declined to impose a single-document requirement. What matters is that the *actual* Congress declined to impose a single-document requirement in 1996, just as it had declined to do before 1996.

Third, the Court turns to post-enactment regulatory history. According to the Court, language in the preamble to a 1997 notice of proposed rulemaking issued jointly by the Immigration and Naturalization Service and the Executive Office for Immigration Review suggests that those agencies once believed that a single document was required. *Ante*, at 168; see 62 Fed. Reg. 449. Even assuming that this executive agency interpretation (found in a preamble to a notice of proposed rulemaking) could alter the otherwise-best interpretation of the statute, the proposed rule that follows the preamble undercuts the Court's characterization of the agencies' 1997 position. The 1997 proposed rule stated that the Government would include the time and place of the removal hearing in the initial charging document "*where practicable.*" *Id.*, at 457 (emphasis added). And the proposed rule gave alternative instructions for when time and place information "is not contained" in the initial document. *Ibid.* That formulation does not reflect a single-document interpretation of the statute. So post-enactment regulatory history does not help the Court any more than statutory history; indeed, the post-enactment regulatory history appears in significant tension with the Court's reading.

In the end, the Court's arguments based on structure and history all fail to answer a very simple question: If Congress wanted all the information to be included in one document in order to stop the 10-year clock, why did Congress not say that all the information must be included in one document?

II

The Court concludes its opinion by suggesting that its decision will rein in the Federal Government and produce policy benefits for noncitizens. But the Court's decision will not meaningfully benefit noncitizens going forward, and it will ultimately benefit few if any noncitizens who have already been notified of their removal proceedings. Meanwhile, the Court's decision will impose significant costs on the immigration system, which of course means more backlog for *other noncitizens* involved in other immigration cases.

To be clear, demonstrating that the Court is wrong to predict policy benefits from its decision is not ignoring a "statutory command" in favor of policy views. *Ante,* at 171. Rather, the point here is that the Court's opinion both errs as a matter of statutory interpretation *and* will not meaningfully help noncitizens, contrary to the Court's prediction.

Start with the supposed policy benefit that the Court identifies: The Court suggests that its decision will help noncitizens by stopping the Government from sending numerous documents (more than two) to noncitizens over a period of months or even years, perhaps in an effort to confuse them. But the Court does not point to any examples of the Government *actually* serving a notice to appear in more than two documents, or over a period of years. After all, why would the Government do so, absent a need to reschedule a hearing? It would make no sense. Under the statute as interpreted in *Pereira*, the Government cannot stop the continuous-presence clock until it provides the time and place of the removal hearing. And the immigration court cannot commence the removal hearing until the Government does so. So wasting years and sending multiple documents to serve a notice to appear would only work to the Government's disadvantage because it would delay the hearing. The supposed "benefit" of the Court's decision, then, is simply to prevent the Government from doing something that it has no incentive to do in the first place. The Court's opinion cures a problem of its own imagination.

In fact, the Court's decision will not alter the delivery of notice in any meaningful way. Going forward, when the Government wants to initiate the process of removing a noncitizen before it knows with certainty the time and place of the noncitizen's initial removal hearing, the Government can comply with today's decision in one of three ways. None of the three alternatives provides meaningful benefits for noncitizens as compared to the Government's current practice of sometimes using two documents, and two of the options are worse for noncitizens.

The first way that the Government can comply with today's decision is simply to do what it did in Niz-Chavez's case, with one minor change. The Government can still send an initial document that informs the noncitizen of all relevant information except the time and place of the hearing, and then a second document that supplies the time and place of the hearing. All that the Government needs to do to comply with today's decision and still stop the 10-year clock is to repeat all the information from the first document in the second document, or alternatively to provide a copy of the first document when it serves the second. Delivered together, the two attachments will form a single, complete notice to appear even under the Court's strained interpretation, and therefore will stop the 10-year clock. (Counsel for Niz-Chavez forthrightly conceded all of this at oral argument. Tr. of Oral Arg. 24.) The Court insists that this change in practice will still help noncitizens, but it fails to explain how. The first document sent to Niz-Chavez in this case informed him that he was required to carry the document with him at all times. Especially in light of that obligation, it is hard to see any meaningful benefit in the Government's resending the same initial document to a noncitizen once the hearing has been scheduled.

But even if that first possible method of complying with today's decision would benefit noncitizens in some minimal way, it is not clear that the Government will actually choose that option. Instead, the Government can comply with today's decision in other ways that will leave noncitizens *worse off.* As a second option, for example, the Government may stop sending the first document at all and just wait until it can provide all the information in one comprehensive document—necessarily closer to the date of the hearing. That would indisputably comply with today's decision but would disadvantage noncitizens by affording them less time to prepare for removal hearings.

The third possible option is no better for noncitizens. When the Government is ready to initiate removal proceedings but does not know the time and place of a hearing, it could comply with the Court's decision by sending a document with a placeholder time and place of the hearing and then later serve a second document with the actual time and place of the hearing. As counsel for Niz-Chavez conceded at oral argument, doing so would comply with the statute and allow the Government to stop the continuous-presence clock upon service of the *initial* document rather than the second document. *Id.*, at 15. That option would give noncitizens *less* time to accrue continuous presence than when the Government includes the time and place only in the second document. Moreover, that approach—sending the noncitizen two different times or places—is a recipe for confusion.

In short, the Court's conclusion today will not necessarily help noncitizens or constrain the Government going forward.[3]

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[3] The Court says that the immigration policy advocates who filed *amicus* briefs in support of Niz-Chavez disagree with that assessment of the consequences of today's decision. But those briefs are especially concerned with the Government stopping the clock with a notice that has a placeholder date and then sending a later document with the actual date. See, *e. g.*, Brief for American Immigration Lawyers Association et al. as *Amici Curiae* 15–19; Brief for Thirty-Three Former Immigration Judges and Members of the Board of Immigration Appeals as *Amici Curiae* 18–23. Yet as counsel for Niz-Chavez forthrightly conceded at oral argument, the

But *looking backwards*, will the Court's decision at least supply a benefit to some noncitizens such as Niz-Chavez who *previously* received a notice to appear in two documents? To begin with, any noncitizen who becomes eligible for cancellation of removal notwithstanding the noncitizen's receipt of all the required information in writing before 10 years of continuous presence would receive a windfall based on the thinnest of technicalities. Consider Niz-Chavez himself. He received all the required information before the 10-year clock had run, he showed up at the hearing with counsel, and he suffered zero prejudice from receiving notice in two documents rather than one.

But in any event, that eligibility windfall is unlikely to translate to any real-world benefit for many noncitizens in Niz-Chavez's position. To be sure, today's decision means that some noncitizens in Niz-Chavez's position will now become *eligible* for cancellation of removal. But that does not mean that those noncitizens will actually *receive* cancellation of removal as a result of today's decision. Cancellation of removal is discretionary. §§ 1229b(a), (b)(1). In other words, today's decision means only that immigration judges have discretion to grant cancellation of removal for some noncitizens who received notice in two documents.

And there is another apparent catch. Subject to a few exceptions not relevant here, the number of noncitizens who may receive cancellation of removal is capped by statute at only 4,000 per year. § 1229b(e)(1). Those 4,000 spots are "coveted and scarce"—so scarce, in fact, that in recent years, "according to the Executive Office for Immigration Review, 3,500 cancellation of removal slots have been filled on the first day" of the year. *Matter of Castillo-Perez*, 27 I. & N. Dec. 664, 669 (Atty. Gen. 2019). "The other 500 slots are set aside to be granted to detained aliens throughout the year." *Ibid.* Perhaps a small handful of the noncitizens who re-

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approach adopted by the Court today will still allow that practice going forward. See Tr. of Oral Arg. 15.

ceive an eligibility windfall as a result of today's decision will ultimately also receive cancellation of removal. But that is far from clear.

Meanwhile, the Court's decision will impose substantial costs and burdens on the immigration system, as the Government has detailed. Tr. of Oral Arg. 52–54. Because today's decision means that many more people who have been in removal proceedings may be eligible for cancellation of removal, presumably many more people will apply. And processing all of those extra applications for cancellation of removal will impose costs on the immigration system and create backlogs and delays for other noncitizens trying to get their day in court. More than 1.2 million cases are currently inching their way through the immigration courts. Dept. of Justice, Executive Office for Immigration Review Adjudication Statistics, Pending Cases, New Cases, and Total Completions (Jan. 7, 2021). If even a small portion of the noncitizens with pending removal cases become eligible for cancellation of removal solely because of today's decision, and then apply for cancellation of removal, the immigration courts will need to expend substantial resources to timely consider those applications for relief, even though many of them are likely to be denied.

In sum, the Court's statutory conclusion in this case will not necessarily help noncitizens. The Court's statutory interpretation is not likely to create meaningful benefits for many noncitizens going forward, and it is not likely to create benefits for many noncitizens looking backwards. And it will impose serious administrative burdens on an immigration system that is already overburdened, thereby harming other noncitizens.

* * *

As a matter of policy, one may reasonably debate the circumstances under which a noncitizen who is unlawfully in the country should be removed and should be eligible for cancellation of removal. But those policy choices are for the political branches. Our job is to follow the law passed by Congress and signed by the President.

The statute here requires the Government to serve the noncitizen with written notice of the charges and other required information, including the time and place of the hearing. In this case, Niz-Chavez received written notice of the charges and all the required information, including the time and place of his hearing. Niz-Chavez appeared with counsel at his hearing in Detroit on June 25, 2013. Because he received written notice to appear before he had accumulated 10 years of continuous physical presence, he is not eligible for cancellation of removal. I respectfully dissent.

Syllabus

CANIGLIA *v.* STROM ET AL.

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

No. 20–157. Argued March 24, 2021—Decided May 17, 2021

During an argument with his wife, petitioner Edward Caniglia placed a handgun on the dining room table and asked his wife to "shoot [him] and get it over with." His wife instead left the home and spent the night at a hotel. The next morning, she was unable to reach her husband by phone, so she called the police to request a welfare check. The responding officers accompanied Caniglia's wife to the home, where they encountered Caniglia on the porch. The officers called an ambulance based on the belief that Caniglia posed a risk to himself or others. Caniglia agreed to go to the hospital for a psychiatric evaluation on the condition that the officers not confiscate his firearms. But once Caniglia left, the officers located and seized his weapons. Caniglia sued, claiming that the officers had entered his home and seized him and his firearms without a warrant in violation of the Fourth Amendment. The District Court granted summary judgment to the officers. The First Circuit affirmed, extrapolating from the Court's decision in *Cady* v. *Dombrowski*, 413 U. S. 433, a theory that the officers' removal of Caniglia and his firearms from his home was justified by a "community caretaking exception" to the warrant requirement.

Held: Neither the holding nor logic of *Cady* justifies such warrantless searches and seizures in the home. *Cady* held that a warrantless search of an impounded vehicle for an unsecured firearm did not violate the Fourth Amendment. In reaching this conclusion, the Court noted that the officers who patrol the "public highways" are often called to discharge noncriminal "community caretaking functions," such as responding to disabled vehicles or investigating accidents. 413 U. S., at 441. But searches of vehicles and homes are constitutionally different, as the *Cady* opinion repeatedly stressed. *Id.*, at 439, 440–442. The very core of the Fourth Amendment's guarantee is the right of a person to retreat into his or her home and "there be free from unreasonable governmental intrusion." *Florida* v. *Jardines*, 569 U. S. 1, 6. A recognition of the existence of "community caretaking" tasks, like rendering aid to motorists in disabled vehicles, is not an open-ended license to perform them anywhere. Pp. 197–199.

953 F. 3d 112, vacated and remanded.

Thomas, J., delivered the opinion for a unanimous Court. Roberts, C. J., filed a concurring opinion, in which Breyer, J., joined, *post*, p. 199. Alito, J., *post*, p. 200, and Kavanaugh, J., *post*, p. 204, filed concurring opinions.

Shay Dvoretzky argued the cause for petitioner. With him on the briefs were *Jonathan L. Marcus*, *Emily J. Kennedy*, *Thomas W. Lyons*, and *Rhiannon S. Huffman.*

Marc DeSisto argued the cause for respondents. With him on the brief were *Michael A. DeSisto*, *Rebecca Tedford Partington*, *Kathleen M. Daniels*, and *Jonathan A. Herstoff.*

Morgan L. Ratner argued the cause for the United States as *amicus curiae* urging affirmance. With her on the brief were *Acting Solicitor General Prelogar*, *Acting Assistant Attorney General McQuaid*, *Deputy Solicitor General Feigin,* and *Ross B. Goldman.**

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*Briefs of *amici curiae* urging reversal were filed for the American Association of Suicidology by *Christopher S. Gontarz* and *Kelly M. Fracassa*; for the American Civil Liberties Union et al. by *Lisa S. Blatt, Charles L. McCloud, Clark M. Neily III, Ilya Shapiro, David D. Cole, Ezekiel Edwards*, and *Lynette Labinger*; for the Constitutional Accountability Center by *Elizabeth B. Wydra, Brianne J. Gorod, David H. Gans,* and *Brian R. Frazelle*; for the Firearms Policy Coalition et al. by *Joseph G. S. Greenlee* and *David B. Kopel*; for Gun Owners of America, Inc., et al. by *William J. Olson, Jeremiah L. Morgan, Robert J. Olson,* and *Herbert W. Titus*; for the Institute for Justice by *Joshua Windham* and *Robert Frommer*; for the National Association of Criminal Defense Lawyers et al. by *Joshua L. Dratel*; for The Rutherford Institute by *Michael J. Lockerby, George E. Quillin,* and *John W. Whitehead*; for the Second Amendment Foundation by *Donald E. J. Kilmer, Jr.*; and for the Second Amendment Law Center, Inc., et al. by *Stephen P. Halbrook, C. D. Michel, Anna M. Barvir,* and *Matthew D. Cubeiro.*

Briefs of *amici curiae* urging affirmance were filed for the State of Iowa et al. by *Sean D. Reyes*, Attorney General of Utah, *Melissa Holyoak*, Solicitor General, *Thomas B. Brunker,* Deputy Solicitor General, *David Simpson,* Assistant Solicitor General, and *Jeffrey S. Gray,* and by the Attorneys General for their respective States as follows: *Thomas J. Miller* of Iowa, *Jeff Landry* of Louisiana, *Keith Ellison* of Minnesota, *Austin*

JUSTICE THOMAS delivered the opinion of the Court.

Decades ago, this Court held that a warrantless search of an impounded vehicle for an unsecured firearm did not violate the Fourth Amendment. *Cady* v. *Dombrowski*, 413 U. S. 433 (1973). In reaching this conclusion, the Court observed that police officers who patrol the "public highways" are often called to discharge noncriminal "community caretaking functions," such as responding to disabled vehicles or investigating accidents. *Id.*, at 441. The question today is whether *Cady*'s acknowledgment of these "caretaking" duties creates a standalone doctrine that justifies warrantless searches and seizures in the home. It does not.

I

During an argument with his wife at their Rhode Island home, Edward Caniglia (petitioner) retrieved a handgun from the bedroom, put it on the dining room table, and asked his wife to "shoot [him] now and get it over with." She declined, and instead left to spend the night at a hotel. The next morning, when petitioner's wife discovered that she could not reach him by telephone, she called the police (respondents) to request a welfare check.

Respondents accompanied petitioner's wife to the home, where they encountered petitioner on the porch. Petitioner spoke with respondents and confirmed his wife's account of the argument, but denied that he was suicidal. Respondents, however, thought that petitioner posed a risk to himself or others. They called an ambulance, and petitioner agreed

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Knudsen of Montana, *Mike Hunter* of Oklahoma, *Alan Wilson* of South Carolina, *Jason R. Ravnsborg* of South Dakota, and *Ken Paxton* of Texas; and for the National Association of Counties et al. by *John J. Korzen* and *Lisa Soronen.*

Briefs of *amici curiae* were filed for the Pacific Legal Foundation by *Daniel Woislaw* and *Steven M. Simpson*; and for the Project for Privacy & Surveillance Accountability et al. by *Gene C. Schaerr, Erik S. Jaffe, Hannah C. Smith, Kathryn E. Tarbert, Scott D. Goodwin,* and *Mahesha P. Subbaraman.*

to go to the hospital for a psychiatric evaluation—but only after respondents allegedly promised not to confiscate his firearms. Once the ambulance had taken petitioner away, however, respondents seized the weapons. Guided by petitioner's wife—whom they allegedly misinformed about his wishes—respondents entered the home and took two handguns.

Petitioner sued, claiming that respondents violated the Fourth Amendment when they entered his home and seized him and his firearms without a warrant. The District Court granted summary judgment to respondents, and the First Circuit affirmed solely on the ground that the decision to remove petitioner and his firearms from the premises fell within a "community caretaking exception" to the warrant requirement. 953 F. 3d 112, 121–123, 131, and nn. 5, 9 (2020). Citing this Court's statement in *Cady* that police officers often have noncriminal reasons to interact with motorists on "public highways," 413 U. S., at 441, the First Circuit extrapolated a freestanding community-caretaking exception that applies to both cars and homes. 953 F. 3d, at 124 ("Threats to individual and community safety are not confined to the highways"). Accordingly, the First Circuit saw no need to consider whether anyone had consented to respondents' actions; whether these actions were justified by "exigent circumstances"; or whether any state law permitted this kind of mental-health intervention. *Id.*, at 122–123. All that mattered was that respondents' efforts to protect petitioner and those around him were "distinct from 'the normal work of criminal investigation,'" fell "within the realm of reason," and generally tracked what the court viewed to be "sound police procedure." *Id.*, at 123–128, 132–133. We granted certiorari. 592 U. S. 1112 (2020).

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." The "'very core'" of this guarantee is "'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" *Florida* v. *Jardines*, 569 U. S. 1, 6 (2013).

To be sure, the Fourth Amendment does not prohibit all unwelcome intrusions "on private property," *ibid.*—only "unreasonable" ones. We have thus recognized a few permissible invasions of the home and its curtilage. Perhaps most familiar, for example, are searches and seizures pursuant to a valid warrant. See *Collins* v. *Virginia*, 584 U. S. 586, 592–593 (2018). We have also held that law enforcement officers may enter private property without a warrant when certain exigent circumstances exist, including the need to "'render emergency assistance to an injured occupant or to protect an occupant from imminent injury.'" *Kentucky* v. *King*, 563 U. S. 452, 460, 470 (2011); see also *Brigham City* v. *Stuart*, 547 U. S. 398, 403–404 (2006) (listing other examples of exigent circumstances). And, of course, officers may generally take actions that "'any private citizen might do'" without fear of liability. *E. g.*, *Jardines*, 569 U. S., at 8 (approaching a home and knocking on the front door).

The First Circuit's "community caretaking" rule, however, goes beyond anything this Court has recognized. The decision below assumed that respondents lacked a warrant or consent, and it expressly disclaimed the possibility that they were reacting to a crime. The court also declined to consider whether any recognized exigent circumstances were present because respondents had forfeited the point. Nor did it find that respondents' actions were akin to what a private citizen might have had authority to do if petitioner's wife had approached a neighbor for assistance instead of the police.

Neither the holding nor logic of *Cady* justified that approach. True, *Cady* also involved a warrantless search for a firearm. But the location of that search was an impounded vehicle—not a home—" 'a constitutional difference' " that the opinion repeatedly stressed. 413 U. S., at 439; see also *id.*, at 440–442. In fact, *Cady* expressly contrasted its treatment of a vehicle already under police control with a search of a car "parked adjacent to the dwelling place of the owner." *Id.*, at 446–448 (citing *Coolidge* v. *New Hampshire*, 403 U. S. 443 (1971)).

Cady's unmistakable distinction between vehicles and homes also places into proper context its reference to "community caretaking." This quote comes from a portion of the opinion explaining that the "frequency with which . . . vehicle[s] can become disabled or involved in . . . accident[s] on public highways" often requires police to perform noncriminal "community caretaking functions," such as providing aid to motorists. 413 U. S., at 441. But, this recognition that police officers perform many civic tasks in modern society was just that—a recognition that these tasks exist, and not an open-ended license to perform them anywhere.

* * *

What is reasonable for vehicles is different from what is reasonable for homes. *Cady* acknowledged as much, and this Court has repeatedly "declined to expand the scope of . . . exceptions to the warrant requirement to permit warrantless entry into the home." *Collins*, 584 U. S., at 595. We thus vacate the judgment below and remand for further proceedings consistent with this opinion.

It is so ordered.

Chief Justice Roberts, with whom Justice Breyer joins, concurring.

Fifteen years ago, this Court unanimously recognized that "[t]he role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties."

Brigham City v. *Stuart*, 547 U. S. 398, 406 (2006). A warrant to enter a home is not required, we explained, when there is a "need to assist persons who are seriously injured or threatened with such injury." *Id.*, at 403; see also *Michigan* v. *Fisher*, 558 U. S. 45, 49 (2009) (*per curiam*) (warrantless entry justified where "there was an objectively reasonable basis for believing that medical assistance was needed, or persons were in danger" (internal quotation marks omitted)). Nothing in today's opinion is to the contrary, and I join it on that basis.

JUSTICE ALITO, concurring.

I join the opinion of the Court but write separately to explain my understanding of the Court's holding and to highlight some important questions that the Court does not decide.

1. The Court holds—and I entirely agree—that there is no special Fourth Amendment rule for a broad category of cases involving "community caretaking." As I understand the term, it describes the many police tasks that go beyond criminal law enforcement. These tasks vary widely, and there is no clear limit on how far they might extend in the future. The category potentially includes any non-law-enforcement work that a community chooses to assign, and because of the breadth of activities that may be described as community caretaking, we should not assume that the Fourth Amendment's command of reasonableness applies in the same way to everything that might be viewed as falling into this broad category.

The Court's decision in *Cady* v. *Dombrowski*, 413 U. S. 433 (1973), did not recognize any such "freestanding" Fourth Amendment category. See *ante*, at 197, 199. The opinion merely used the phrase "community caretaking" in passing. 413 U. S., at 441.

2. While there is no overarching "community caretaking" doctrine, it does not follow that all searches and seizures

conducted for non-law-enforcement purposes must be analyzed under precisely the same Fourth Amendment rules developed in criminal cases. Those rules may or may not be appropriate for use in various non-criminal-law-enforcement contexts. We do not decide that issue today.

3. This case falls within one important category of cases that could be viewed as involving community caretaking: conducting a search or seizure for the purpose of preventing a person from committing suicide. Assuming that petitioner did not voluntarily consent to go with the officers for a psychological assessment,[1] he was seized and thus subjected to a serious deprivation of liberty. But was this warrantless seizure "reasonable"? We have addressed the standards required by due process for involuntary commitment to a mental treatment facility, see *Addington* v. *Texas*, 441 U. S. 418, 427 (1979); see also *O'Connor* v. *Donaldson*, 422 U. S. 563, 574–576 (1975); *Foucha* v. *Louisiana*, 504 U. S. 71, 75–77, 83 (1992), but we have not addressed Fourth Amendment restrictions on seizures like the one that we must assume occurred here, *i. e.*, a short-term seizure conducted for the purpose of ascertaining whether a person presents an imminent risk of suicide. Every State has laws allowing emergency seizures for psychiatric treatment, observation, or stabilization, but these laws vary in many respects, including the categories of persons who may request the emergency action, the reasons that can justify the action, the necessity of a judicial proceeding, and the nature of the proceeding.[2] Mentioning these laws only in passing, petitioner asked us to

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[1] The Court of Appeals assumed petitioner's consent was not voluntary because the police allegedly promised that they would not seize his guns if he went for a psychological evaluation. 953 F. 3d 112, 121 (CA1 2020). The Court does not decide whether this assumption was justified.

[2] See Brief for Petitioner 38–39, n. 4 (gathering state authorities); L. Hedman et al., State Laws on Emergency Holds for Mental Health Stabilization, 67 Psychiatric Servs. 579 (2016).

render a decision that could call features of these laws into question. The Court appropriately refrains from doing so.

4. This case also implicates another body of law that petitioner glossed over: the so-called "red flag" laws that some States are now enacting. These laws enable the police to seize guns pursuant to a court order to prevent their use for suicide or the infliction of harm on innocent persons. See, *e. g.*, Cal. Penal Code Ann. §§ 18125–18148 (West Cum. Supp. 2021); Fla. Stat. § 790.401(4) (Cum. Supp. 2021); Mass. Gen. Laws Ann., ch. 140, § 131T (2021). They typically specify the standard that must be met and the procedures that must be followed before firearms may be seized. Provisions of red flag laws may be challenged under the Fourth Amendment, and those cases may come before us. Our decision today does not address those issues.

5. One additional category of cases should be noted: those involving warrantless, nonconsensual searches of a home for the purpose of ascertaining whether a resident is in urgent need of medical attention and cannot summon help. At oral argument, THE CHIEF JUSTICE posed a question that highlighted this problem. He imagined a situation in which neighbors of an elderly woman call the police and express concern because the woman had agreed to come over for dinner at 6 p.m., but by 8 p.m., had not appeared or called even though she was never late for anything. The woman had not been seen leaving her home, and she was not answering the phone. Nor could the neighbors reach her relatives by phone. If the police entered the home without a warrant to see if she needed help, would that violate the Fourth Amendment? Tr. of Oral Arg. 6–8.

Petitioner's answer was that it would. Indeed, he argued, even if 24 hours went by, the police still could not lawfully enter without a warrant. If the situation remained unchanged for several days, he suggested, the police might be able to enter after obtaining "a warrant for a missing person." *Id.*, at 9.

THE CHIEF JUSTICE's question concerns an important real-world problem. Today, more than ever, many people, including many elderly persons, live alone.[3] Many elderly men and women fall in their homes,[4] or become incapacitated for other reasons, and unfortunately, there are many cases in which such persons cannot call for assistance. In those cases, the chances for a good recovery may fade with each passing hour.[5] So in THE CHIEF JUSTICE's imaginary case, if the elderly woman was seriously hurt or sick and the police heeded petitioner's suggestion about what the Fourth Amendment demands, there is a fair chance she would not be found alive. This imaginary woman may have regarded her house as her castle, but it is doubtful that she would have wanted it to be the place where she died alone and in agony.

Our current precedents do not address situations like this. We have held that the police may enter a home without a warrant when there are "exigent circumstances." *Payton* v. *New York*, 445 U. S. 573, 590 (1980). But circumstances are exigent only when there is not enough time to get a warrant, see *Missouri* v. *McNeely*, 569 U. S. 141, 149 (2013); *Michigan* v. *Tyler*, 436 U. S. 499, 509 (1978), and warrants are not typically granted for the purpose of checking on a person's medical condition. Perhaps States should institute procedures for the issuance of such warrants, but in the meantime, courts may be required to grapple with the basic Fourth Amendment question of reasonableness.

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[3] Dept. of Commerce, Bureau of Census, The Rise of Living Alone, Fig. HH–4 (2020), https://www.census.gov/content/dam/Census/library/visualizations/time-series/demo/families-and-households/hh-4.pdf; Ortiz-Ospina, The Rise of Living Alone (Dec. 10, 2019), https://ourworldindata.org/living-alone; Smith, Cities With the Most Adults Living Alone (May 4, 2020), https://www.self.inc/blog/adults-living-alone.

[4] See B. Moreland, R. Kakara, & A. Henry, Trends in Nonfatal Falls and Fall-Related Injuries Among Adults Aged ≥65 Years—United States, 2012–2018, 69 Morbidity and Mortality Weekly Rep. 875 (2020).

[5] See, *e. g.*, J. Gurley, N. Lum, M. Sande, B. Lo, & M. Katz, Persons Found in Their Homes Helpless or Dead, 334 New Eng. J. Med. 1710 (1996).

6. The three categories of cases discussed above are simply illustrative. Searches and seizures conducted for other non-law-enforcement purposes may arise and may present their own Fourth Amendment issues. Today's decision does not settle those questions.

* * *

In sum, the Court properly rejects the broad "community caretaking" theory on which the decision below was based. The Court's decision goes no further, and on that understanding, I join the opinion in full.

JUSTICE KAVANAUGH, concurring.

I join the Court's opinion in full. I write separately to underscore and elaborate on THE CHIEF JUSTICE's point that the Court's decision does not prevent police officers from taking reasonable steps to assist those who are inside a home and in need of aid. See *ante,* at 199–200 (ROBERTS, C. J., concurring). For example, as I will explain, police officers may enter a home without a warrant in circumstances where they are reasonably trying to prevent a potential suicide or to help an elderly person who has been out of contact and may have fallen and suffered a serious injury.

Ratified in 1791 and made applicable to the States in 1868, the Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." As the constitutional text establishes, the "ultimate touchstone of the Fourth Amendment is reasonableness." *Riley* v. *California*, 573 U. S. 373, 381 (2014) (internal quotation marks omitted). The Court has said that a warrant supported by probable cause is ordinarily required for law enforcement officers to enter a home. See U. S. Const., Amdt. 4. But drawing on common-law analogies and a commonsense appraisal of what is "reasonable," the Court has recognized various situations where a warrant is not required. For example, the exigent circumstances doctrine allows officers to enter a home without a warrant in certain situations, including: to fight a fire and investigate its cause; to prevent the imminent destruction of evidence; to engage in hot pursuit of a fleeing felon or prevent a suspect's escape; to address a threat to the safety of law enforcement officers or the general public; to render emergency assistance to an injured occupant; or to protect an occupant who is threatened with serious injury. See *Mitchell* v. *Wisconsin*, 588 U. S. 840, 847–848 (2019) (plurality opinion); *City and County of San Francisco* v. *Sheehan*, 575 U. S. 600, 612 (2015); *Kentucky* v. *King*, 563 U. S. 452, 460, 462 (2011); *Michigan* v. *Fisher*, 558 U. S. 45, 47 (2009) (*per curiam*); *Brigham City* v. *Stuart*, 547 U. S. 398, 403 (2006); *Minnesota* v. *Olson*, 495 U. S. 91, 100 (1990); *Michigan* v. *Clifford*, 464 U. S. 287, 293, and n. 4 (1984) (plurality opinion); *Mincey* v. *Arizona*, 437 U. S. 385, 392–394 (1978); *Michigan* v. *Tyler*, 436 U. S. 499, 509–510 (1978); *United States* v. *Santana*, 427 U. S. 38, 42–43 (1976); *Warden, Md. Penitentiary* v. *Hayden*, 387 U. S. 294, 298–299 (1967); *Ker* v. *California*, 374 U. S. 23, 40–41 (1963) (plurality opinion).

Over the years, many courts, like the First Circuit in this case, have relied on what they have labeled a "community caretaking" doctrine to allow warrantless entries into the home for a non-investigatory purpose, such as to prevent a suicide or to conduct a welfare check on an older individual who has been out of contact. But as the Court today explains, any such standalone community caretaking doctrine was primarily devised for searches of cars, not homes. *Ante*, at 197–199; see *Cady* v. *Dombrowski*, 413 U. S. 433, 447–448 (1973).

That said, this Fourth Amendment issue is more labeling than substance. The Court's Fourth Amendment case law already recognizes the exigent circumstances doctrine, which allows an officer to enter a home without a warrant if the "exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Brigham City*, 547 U. S., at 403 (internal quotation marks omitted); see also *ante*, at 198. As relevant here, one such recognized "exigency" is the "need to assist persons who are seriously injured or threatened with such injury." *Brigham City*, 547 U. S., at 403; see also *ante*, at 199–200 (ROBERTS, C. J., concurring). The Fourth Amendment allows officers to enter a home if they have "an objectively reasonable basis for believing" that such help is needed, and if the officers' actions inside the home are reasonable under the circumstances. *Brigham City*, 547 U. S., at 406; see also *Michigan* v. *Fisher*, 558 U. S., at 47–48.

This case does not require us to explore all the contours of the exigent circumstances doctrine as applied to emergency-aid situations because the officers here disclaimed reliance on that doctrine. But to avoid any confusion going forward, I think it important to briefly describe how the doctrine applies to some heartland emergency-aid situations.

As Chief Judge Livingston has cogently explained, although this doctrinal area does not draw much attention from courts or scholars, "municipal police spend a good deal of time responding to calls about missing persons, sick neighbors, and premises left open at night." Livingston, Police, Community Caretaking, and the Fourth Amendment, 1998 U. Chi. Leg. Forum 261, 263 (1998). And as she aptly noted, "the responsibility of police officers to search for missing persons, to mediate disputes, and to aid the ill or injured has never been the subject of serious debate; nor has" the "responsibility of police to provide services in an emergency." *Id.*, at 302.

Consistent with that reality, the Court's exigency precedents, as I read them, permit warrantless entries when police officers have an objectively reasonable basis to believe that there is a current, ongoing crisis for which it is reasonable to act now. See, *e. g., Sheehan*, 575 U. S., at 612; *Michigan* v. *Fisher*, 558 U. S., at 48–49; *Brigham City*, 547 U. S., at 406–407. The officers do not need to show that the harm has already occurred or is mere moments away, because knowing that will often be difficult if not impossible in cases involving, for example, a person who is currently suicidal or an elderly person who has been out of contact and may have fallen. If someone is at risk of serious harm and it is reasonable for officers to intervene now, that is enough for the officers to enter.

A few (non-exhaustive) examples illustrate the point.

Suppose that a woman calls a healthcare hotline or 911 and says that she is contemplating suicide, that she has firearms in her home, and that she might as well die. The operator alerts the police, and two officers respond by driving to the woman's home. They knock on the door but do not receive a response. May the officers enter the home? Of course.

The exigent circumstances doctrine applies because the officers have an "objectively reasonable basis" for believing that an occupant is "seriously injured or threatened with such injury." *Id.*, at 400, 403; cf. *Sheehan*, 575 U. S., at 612 (officers could enter the room of a mentally ill person who had locked herself inside with a knife). After all, a suicidal individual in such a scenario could kill herself at any moment. The Fourth Amendment does not require officers to stand idly outside as the suicide takes place.[1]

Consider another example. Suppose that an elderly man is uncharacteristically absent from Sunday church services and repeatedly fails to answer his phone throughout the day and night. A concerned relative calls the police and asks the officers to perform a wellness check. Two officers drive

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[1] In 2019 in the United States, 47,511 people committed suicide. That number is more than double the number of annual homicides. See Dept. of Health and Human Servs., Centers for Disease Control and Prevention, D. Stone, C. Jones, & K. Mack, Changes in Suicide Rates—United States, 2018–2019, 70 Morbidity and Mortality Weekly Rep. 261, 263 (2021) (MMWR); Dept. of Justice, Federal Bureau of Investigation, Uniform Crime Report, Crime in the United States, 2019, p. 2 (2020).

to the man's home. They knock but receive no response. May the officers enter the home? Of course.

Again, the officers have an "objectively reasonable basis" for believing that an occupant is "seriously injured or threatened with such injury." *Brigham City,* 547 U. S., at 400, 403. Among other possibilities, the elderly man may have fallen and hurt himself, a common cause of death or serious injury for older individuals. The Fourth Amendment does not prevent the officers from entering the home and checking on the man's well-being.[2]

To be sure, courts, police departments, and police officers alike must take care that officers' actions in those kinds of cases are reasonable under the circumstances. But both of those examples and others as well, such as cases involving unattended young children inside a home, illustrate the kinds of warrantless entries that are perfectly constitutional under the exigent circumstances doctrine, in my view.

With those observations, I join the Court's opinion in full.

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[2] In 2018 in the United States, approximately 32,000 older adults died from falls. Falls are also the leading cause of injury for older adults. B. Moreland, R. Kakara, & A. Henry, Trends in Nonfatal Falls and Fall-Related Injuries Among Adults Aged ≥ 65 Years—United States, 2012–2018, 69 MMWR 875 (2020).

CIC SERVICES, LLC *v.* INTERNAL REVENUE SERVICE ET AL.

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

No. 19–930. Argued December 1, 2020—Decided May 17, 2021

Internal Revenue Service (IRS) Notice 2016–66 requires taxpayers and "material advisors" like petitioner CIC to report information about certain insurance agreements called micro-captive transactions. The consequences for noncompliance include both civil tax penalties and criminal prosecution. Prior to the Notice's first reporting deadline, CIC filed a complaint challenging the Notice as invalid under the Administrative Procedure Act and asking the District Court to grant injunctive relief setting the Notice aside. The District Court dismissed the action as barred by the Anti-Injunction Act, which generally requires those contesting a tax's validity to pay the tax prior to filing a legal challenge. A divided panel of the Sixth Circuit affirmed.

Held: A suit to enjoin Notice 2016–66 does not trigger the Anti-Injunction Act even though a violation of the Notice may result in a tax penalty. Pp. 216–226.

(a) The Anti-Injunction Act, 26 U. S. C. § 7421(a), provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person." Absent the tax penalty, this case would be easy: the Anti-Injunction Act would pose no barrier. A suit to enjoin a requirement to report information is not an action to restrain the "assessment or collection" of a tax, even if the information will help the IRS collect future tax revenue. See *Direct Marketing Assn.* v. *Brohl*, 575 U. S. 1, 9–10. The addition of a tax penalty complicates matters, but it does not ultimately change the answer. Under the Anti-Injunction Act, a "suit['s] purpose" depends on the action's objective purpose, *i. e.*, the relief the suit requests. *Alexander* v. *"Americans United" Inc.*, 416 U. S. 752, 761. And CIC's complaint seeks to set aside the Notice itself, not the tax penalty that may follow the Notice's breach. The Government insists that no real difference exists between a suit to invalidate the Notice and one to preclude the tax penalty. But three aspects of the regulatory scheme here refute the idea that this is a tax action in disguise. First, the Notice imposes affirmative reporting obligations, inflicting costs separate and apart from the statutory tax penalty. Second, it is hard to characterize CIC's suit as one to enjoin a tax when CIC stands nowhere near the cusp of tax liability; to owe any tax, CIC would have to first violate the Notice, the IRS would then have to find noncompliance, and the IRS would then have to exercise its discretion to levy a tax penalty. Third, the presence of criminal penalties forces CIC to bring an action in just this form, with the requested relief framed in just this manner. The Government's proposed alternative procedure—having a party like CIC disobey the Notice and pay the resulting tax penalty before bringing a suit for a refund—would risk criminal punishment. All of these facts, taken together, show that CIC's suit targets the Notice, not the downstream tax penalty. Thus, the Anti-Injunction Act imposes no bar. Pp. 216–223.

(b) Allowing CIC's suit to proceed will not open the floodgates to pre-enforcement tax litigation. When taxpayers challenge ordinary taxes, assessed on earning income, or selling stock, or entering into a business transaction, the underlying activity is legal, and the sole target for an injunction is the command to pay a tax. In that scenario, the Anti-Injunction Act will always bar pre-enforcement review. And the analysis is the same for a challenge to a so-called regulatory tax—that is, a tax designed mainly to influence private conduct, rather than to raise revenue. The Anti-Injunction Act draws no distinction between regulatory and revenue-raising tax laws, *Bob Jones Univ.* v. *Simon*, 416 U. S. 725, 743, and the Anti-Injunction Act kicks in even if a plaintiff's true objection is to a regulatory tax's regulatory effect. By contrast, CIC's suit targets neither a regulatory tax nor a revenue-raising one; CIC's action challenges a reporting mandate separate from any tax. Because the IRS chose to address its concern about micro-captive agreements by imposing a reporting requirement rather than a tax, suits to enjoin that requirement fall outside the Anti-Injunction Act's domain. Pp. 223–224.

925 F. 3d 247, reversed and remanded.

Kagan, J., delivered the opinion for a unanimous Court. Sotomayor, J., *post*, p. 226, and Kavanaugh, J., *post*, p. 227, filed concurring opinions.

Cameron T. Norris argued the cause for petitioner. With him on the briefs were *Patrick Strawbridge*, *Bryan Weir*, *Adam R. Webber*, and *Kenneth A. Lazarus.*

Jonathan C. Bond argued the cause for respondents. With him on the brief were *Acting Solicitor General Wall*, *Principal Deputy Assistant Attorney General Zuckerman*, *Deputy Solicitor General Stewart, Ellen Page DelSole,* and *Bethany B. Hauser.**

JUSTICE KAGAN delivered the opinion of the Court.

The Anti-Injunction Act, 26 U. S. C. § 7421(a), bars any "suit for the purpose of restraining the assessment or collection of any tax." The question here is whether the Act prohibits a suit seeking to set aside an information-reporting requirement that is backed by both civil tax penalties and criminal penalties. We hold that the Act does not preclude the suit.

I

Americans have never had much enthusiasm for paying taxes. The Nation's first income taxes—adopted to finance the Civil War—met with considerable (one might even say "taxing") legal resistance. See Hickman & Kerska, Restoring the Lost Anti-Injunction Act, 103 Va. L. Rev. 1683, 1723–1725 (2017). Some taxpayers, alleging the taxes illegal,

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*Briefs of *amici curiae* urging reversal were filed for the Americans for Prosperity Foundation by *R. James Valvo III* and *Michael Pepson*; for the Center for Taxpayer Rights by *Carlton M. Smith* and *Meagan Horn*; for the Chamber of Commerce of the United States of America by *Yaakov M. Roth*, *Michael A. Carvin*, and *Robert Luther III*; for the Institute for Free Speech by *Allen Dickerson*, *Tyler Martinez*, and *Zac Morgan*; for the National Federation of Independent Business Small Business Legal Center et al. by *Joseph B. Judkins, A. Duane Webber, George M. Clarke, Daniel A. Rosen,* and *Joshua Odintz*; for the National Taxpayers Union Foundation by *Jospeh D. Henchman*; and for Patrick J. Smith by *Patrick J. Smith, pro se.*

Briefs of *amici curiae* urging affirmance were filed for Former Government Officials by *Jonathan E. Taylor*; and for Bryan T. Camp by *Brian T. Camp, pro se.*

Briefs of *amici curiae* were filed for the Alabama Captive Insurance Association, Inc. et al. by *K. Scott Hamilton* and *William Young Webb*; for the American College of Tax Counsel by *David W. Foster* and *Armando Gomez*; for the Partnership for Conservation by *Nicole M. Elliott*; and for Kristin E. Hickman by *Kristin E. Hickman, pro se.*

sought to enjoin collection efforts. And some courts granted the requested relief. See, *e. g., Roback* v. *Taylor*, 20 F. Cas. 852, 854 (No. 11,877) (CC SD Ohio 1866); *Bank for Savings* v. *Collector*, 3 Wall. 495 (1866). Those rulings disrupted the flow of revenue to the Federal Government. As one late-19th century treatise writer described the problem, "improvident employment of the writ of injunction" threatened to "seriously embarrass" tax-dependent "operations of the government." T. Cooley, Law of Taxation 536–537 (2d ed. 1886).

Congress responded by enacting the Anti-Injunction Act. See Act of Mar. 2, 1867, § 10, 14 Stat. 475. In its current form (differing little from the original), the Act provides: "[N]o suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person." 26 U. S. C. § 7421(a). The Act, we have stated, "protects the [Federal] Government's ability to collect a consistent stream of revenue, by barring litigation to enjoin or otherwise obstruct the collection of taxes." *National Federation of Independent Business* v. *Sebelius*, 567 U. S. 519, 543 (2012) (*NFIB*). Because of the Act, a person can typically challenge a federal tax only after he pays it, by suing for a refund. See *ibid.*

In an ordinary Anti-Injunction Act case, that short primer on the statute would naturally bring us to a description of the tax under dispute. But describing the tax implicated here will have to wait. For that tax—the thing that raises the Anti-Injunction Act question—comes into play only at the back end of a complex information-reporting scheme. The reporting scheme itself is where we must begin.

As every taxpayer knows, the Internal Revenue Service (IRS) has broad power to require the submission of tax-related information that it believes helpful in assessing and collecting taxes. See § 6011(a). Those reporting rules may apply not just to taxpayers but also to "material advisors"—individuals or entities that earn income from providing taxpayers with certain kinds of "aid, assistance, or advice." § 6111(b)(1)(A); see § 6111(a). This case starts with requirements that taxpayers and material advisors provide detailed information about what the Internal Revenue Code calls "reportable transaction[s]." § 6707A(c)(1). The Code describes those transactions simply as ones that "hav[e] a potential for tax avoidance or evasion." *Ibid.* Rather than give further specifics, the Code delegates to the Secretary of the Treasury, acting through the IRS, the task of identifying particular transactions with the requisite risk of tax abuse. See §§ 6011, 6707A(c)(1).

Using that authority, the IRS determined that so-called micro-captive transactions must be reported because of their potential for tax evasion. A micro-captive transaction is typically an insurance agreement between a parent company and a "captive" insurer under its control. The Code provides the parties to such an agreement with tax advantages. The insured party can deduct its premium payments as business expenses. See § 162(a). And the insurer can exclude up to $2.2 million of those premiums from its own taxable income, under a tax break for small insurance companies. See § 831(b). The result is that the money does not get taxed at all. That much, for better or worse, is a congressional choice. But no tax benefit should accrue if the money is not really for insurance—if the insurance contract is a sham, which the affiliated companies have entered into only to escape tax liability. And according to the IRS, some micro-captive transactions are of that kind. So the IRS issued Notice 2016–66 identifying certain micro-captive agreements as reportable transactions. See 2016–47 Cum. Bull. 745. That Notice compels taxpayers and material advisors associated with such an agreement to (among other things) "describe the transaction in sufficient detail for the IRS to be able to understand [its] tax structure." *Id.*, at 748. With that information, the IRS can check for facts—like coverage for an "implausible risk" or premiums that "significantly exceed" prevailing rates—suggesting that the taxpayer is not entitled to the tax benefit it claims. *Id.*, at 745–746.

Noncompliance with Notice 2016–66 subjects a taxpayer or material advisor to stiff penalties—at last bringing us to the tax involved in this case, as well as to non-tax criminal consequences. By statutory provision, all failures to supply required information on reportable transactions, including the micro-captive transactions specified in the Notice, are punishable by civil monetary penalties—$50,000 for advisors and up to that amount (depending on the amount of tax gain realized) for taxpayers. See §§ 6707(b), 6707A(b). In addition, an advisor may incur a daily $10,000 penalty for failing to furnish, on request, a list of the people it advised on a reportable transaction. See §§ 6708(a), 6112(a). And critically here, all those penalties are "deemed" to be "tax[es]" for purposes of the Code—including the Anti-Injunction Act. § 6671(a). So, again, the civil penalties for violating Notice 2016–66 are *tax* penalties, and must be treated as such. But no sooner do we find the tax appended to the Notice's reporting scheme than we encounter something else. Under the Code, any person who "willfully" breaches an IRS reporting requirement is also subject to criminal penalties. § 7203. Such a violation is a misdemeanor, punishable by fines and up to one year in prison. And, unsurprisingly, that criminal liability is not "deemed" a tax.

This suit challenges the lawfulness of Notice 2016–66. The petitioner is CIC Services, a material advisor to taxpayers participating in micro-captive transactions. It brought this action before the Notice's first reporting date, rather than after a reporting violation, let alone payment of penalty. (As far as we know, CIC has still not committed a violation, instead complying with the Notice while pressing this suit.) CIC's complaint mainly asserts that the IRS violated the Administrative Procedure Act (APA) by issuing the Notice without notice-and-comment procedures. The complaint also alleges that the Notice is arbitrary and capricious under the APA because it imposes new reporting requirements without proven need. So the complaint asks the court to "set[ ] aside IRS Notice 2016–66"—more specifically, to "enjoin the enforcement of Notice 2016–66 as an unlawful IRS rule" and to "declar[e] that Notice 2016–66 is unlawful." Complaint in No. 17–CV–110 (ED Tenn., Mar. 27, 2017), Doc. 1, pp. 2, 16 (Complaint).

But the suit has not yet proceeded to the merits. The Government moved to dismiss the action based on the Anti-Injunction Act, arguing that CIC's "requested relief would prevent the IRS from assessing a tax penalty against material advisors" that disregard the Notice's reporting requirements. Motion to Dismiss in No. 17–cv–110 (ED Tenn., May 30, 2017), Doc. 25–1, p. 9. In the Government's view, the way for CIC to bring its claims is to disobey the Notice and then sue for a refund of any resulting tax penalty. The District Court agreed. It reasoned that CIC's suit sought "to restrain the IRS's assessment or collection" of the tax penalty that could be imposed for noncompliance. 2017 WL 5015510, *4 (ED Tenn., Nov. 2, 2017). The Court of Appeals for the Sixth Circuit affirmed in a divided decision. According to the majority, CIC's suit would "restrain (indeed eliminate)" the tax penalty by "invalidat[ing] the Notice, which is [that tax's] entire basis." 925 F. 3d 247, 255 (2019). Judge Nalbandian dissented. "[T]his is not," he wrote, "a dispute over taxes": "[A] suit to enjoin the enforcement of a *reporting requirement* is not" one to restrain a tax's collection. *Id.*, at 259–260. Under the majority's view, the dissent also objected, CIC could challenge the reporting scheme only by "violat[ing] the law" and risking "criminal prosecution." *Id.*, at 263. The Sixth Circuit denied a petition for rehearing en banc, over a dissent from seven judges.

We granted certiorari, 590 U. S. 929 (2020), and now reverse.

II

A

The issue here, most concretely stated, is whether the Anti-Injunction Act bars CIC's suit complaining that Notice 2016–66's reporting requirements violate the APA. Once again, the Anti-Injunction Act provides, with exceptions not relevant here, that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person." § 7421(a). If CIC's suit is not for that purpose, it can go forward. If the suit is for that purpose, it must be dismissed. In that event, CIC could contest the legality of the reporting rules only by violating them and suing for a refund of a later tax penalty.

If that downstream tax penalty did not exist, this case would be a cinch: The Anti-Injunction Act would not apply and the suit could proceed. A reporting requirement is not a tax; and a suit brought to set aside such a rule is not one to enjoin a tax's assessment or collection. That is so even if the reporting rule will help the IRS bring in future tax revenue—here, by identifying sham insurance transactions. See *supra*, at 213–214. We said as much in *Direct Marketing Assn.* v. *Brohl*, 575 U. S. 1 (2015).[1] In that case, out-of-state retailers wanted to invalidate a Colorado law requiring them to report to the State's Department of Revenue any sale to a state resident on which they had not collected tax. We allowed the suit to proceed, explaining that a suit about reporting requirements is not about the "assessment" or "collection" of taxes. *Id.*, at 9–10. "Information gathering," we stated, is "a phase of tax administration procedure that occurs before assessment [or] collection." *Id.*, at 8.

[1] *Direct Marketing* construed the Tax Injunction Act—a statute, "modeled on the Anti-Injunction Act," that limits injunctive relief against *state* tax collection. 575 U. S., at 8. This Court has "assume[d] that words used in both Acts," such as "assessment" and "collection," are "generally used in the same way." *Ibid.*

And it did not matter that the reporting requirements would "facilitate collection of taxes"—there, by identifying residents who owed sales taxes. *Id.*, at 12. The statute's limit on injunctions, we said, is "not keyed to all activities that may improve a State's ability to assess and collect taxes." *Id.*, at 11. It is instead "keyed to the acts of assessment [and] collection themselves." *Id.*, at 12. That means a suit directed at ordinary reporting duties can go forward, unimpeded by the Anti-Injunction Act. On this much, even the Government agrees. See Brief for Respondents 27.

The complication here is that Notice 2016–66's reporting obligations (unlike those in *Direct Marketing*) are backed up by a statutory tax penalty. As earlier described, the Code provides that a taxpayer who violates a demand for information about a reportable transaction—including those specified in the Notice—is subject to civil monetary penalties. See *supra*, at 214. And the Code "deem[s]" those civil penalties to be "tax[es]" as the Anti-Injunction Act uses that term. § 6671(a); see *NFIB*, 567 U. S., at 544 ("Congress can, of course," direct that a penalty "be treated as a tax for purposes of the Anti-Injunction Act"). The question thus becomes whether that added tax penalty changes the analysis. Does its presence—as a sanction for flouting the Notice—mean that CIC's suit is, as the Anti-Injunction Act provides, "for the purpose of restraining the assessment or collection of any tax"?

In considering a "suit['s] purpose," we inquire not into a taxpayer's subjective motive, but into the action's objective aim—essentially, the relief the suit requests. The parties agree on that interpretation, as both consistent with the Act's ordinary meaning and necessary for the Act's administration. See Brief for Respondents 40; Reply Brief 4; Tr. of Oral Arg. 15, 34. The purpose of a measure is "the end or aim to which [it] is directed." N. Webster, An American Dictionary of the English Language (rev. ed. 1844); see Webster's Third New International Dictionary 1847 (1976). And in this context, that aim is not best assessed by probing an individual taxpayer's innermost reasons for suing. Down that path lies too much potential for circumventing the Act. Instead, this Court has looked to the face of the taxpayer's complaint. See, *e. g.*, *Bob Jones Univ.* v. *Simon*, 416 U. S. 725, 738 (1974). We have asked about what the Government here calls "the substance of the suit"—the claims brought and injuries alleged—to determine the suit's object. Brief for Respondents 40. And most especially, we have looked to the "relief requested"—the thing sought to be enjoined. *Alexander* v. *"Americans United" Inc.*, 416 U. S. 752, 761 (1974); see *Bob Jones*, 416 U. S., at 732 ("[A] suit seeking [injunctive] relief" against a tax "falls squarely within the literal scope of the Act"). The Anti-Injunction Act kicks in when the target of a requested injunction is a tax obligation—or stated in the Act's language, when that injunction runs against the "collection or assessment of [a] tax."

It is in characterizing the purpose of CIC's suit that the parties' disagreement emerges. Recall that CIC's complaint avers that Notice 2016–66 violates the APA. See *supra*, at 214–215. And the complaint describes the relief requested as "setting aside IRS Notice 2016–66," "enjoin[ing] the enforcement of Notice 2016–66 as an unlawful IRS rule," and "declaring that Notice 2016–66 is unlawful." Complaint 2, 16. According to CIC, all of that reveals the suit's aim as invalidating the Notice and thereby eliminating its onerous reporting requirements—not as blocking the downstream tax penalty that may sanction the Notice's breach. See Reply Brief 6. By contrast, the Government contends that the suit's purpose is to stop the collection of the tax itself. See Brief for Respondents 12. In making that claim, the Government picks up on the word "enforcement" in CIC's request for relief: Because the Notice is enforced through tax penalties, the Government claims, "enjoin[ing] the [Notice's] enforcement," as CIC wants, means preventing the IRS from collecting taxes. *Id.*, at 23, 37–38. And even putting aside that word, the Government insists that there is no real difference between a suit to invalidate the Notice and one to preclude the tax penalty. See *id.*, at 38; Tr. of Oral Arg. 54–56. Avoiding the burdens of compliance with the Notice and avoiding the tax that sanctions noncompliance, the Government asserts, are "two sides of the same coin." Brief for Respondents 37. The Government thus suggests that by framing this suit as an attack on the Notice, CIC is trying to "eva[de] the Anti-Injunction Act through artful pleading." *Id.*, at 38.

To begin with, we agree with CIC's reading of its complaint. The complaint contests the legality of Notice 2016–66, not of the statutory tax penalty that serves as one way to enforce it. CIC alleges that the Notice is procedurally and substantively flawed; it brings no legal claim against the separate statutory tax. And CIC's complaint asks for injunctive relief from the Notice's reporting rules, not from any impending or eventual tax obligation. Contra the Government's view, a request in an APA action to "enjoin the enforcement" of an IRS reporting rule is most naturally understood as a request to "set aside" that rule (as the complaint elsewhere says), not to block the application of a penalty that might be imposed for some yet-to-happen violation. 5 U. S. C. § 706; Complaint 2, 9, 16. Indeed, CIC's complaint barely mentions that penalty. The complaint, and particularly its request for relief, sets out this suit's purpose as enjoining the Notice.

And we reject the Government's argument that an injunction against the Notice is the same as one against the tax penalty—just "two sides of the same coin." Brief for Respondents 37. If that view were right, of course, no amount of artful pleading would avail: CIC's suit targeting the Notice would then in fact target the tax, and the Anti-Injunction Act would apply. But the Government's take is wrong. Three aspects of the regulatory scheme here, taken in combination, refute the idea that this is a tax action in disguise. They show that in addressing Notice 2016–66, this suit (and any resulting injunction) addresses something other than the tax penalty helping to back it up.

First, the Notice imposes affirmative reporting obligations, inflicting costs separate and apart from the statutory tax penalty. As described earlier, the Notice levies no tax. Rather, it compels taxpayers and their material advisors to collect and submit detailed information about micro-captive transactions and their participants. See *supra,* at 213–214. And obeying that mandate is likely to involve significant time and expense. Here, for example, CIC estimates that it will have to spend "hundreds of hours of labor and in excess of $60,000 per year" to comply with the Notice. See Complaint ¶40. Costs of that kind may well exceed, or even dwarf, the tax penalties for a violation. So in bringing this suit, CIC challenges a regulatory mandate that (1) is not a tax and (2) entails compliance costs whose amount is not tied to, and often goes beyond, any tax. Simply stated, this suit attempts to get out from under the (non-tax) burdens of a (non-tax) reporting obligation. Of course, if the suit succeeds, CIC will never have to worry about the tax penalty; once the reporting duty disappears, the sanction becomes irrelevant. But that is the suit's after-effect, not its substance. The suit still targets the reporting mandates—the independently onerous reporting mandates—of the Notice itself.

Second and relatedly, the Notice's reporting rule and the statutory tax penalty are several steps removed from each other. Consider what has to happen before CIC owes taxes to the IRS. To start, CIC has to withhold required information about a micro-captive transaction that the Notice covers. (And note, for whatever it is worth, that CIC disclaims any intent to do so while the Notice remains the law. See Brief for Petitioner 29.) Next, the IRS must determine (often no small matter) that a violation of the Notice has in fact occurred. And finally, the IRS must make the—entirely discretionary—decision to impose a tax penalty. See

§ 6707A(d). If and only if all those things occur does tax liability attach. That threefold contingency matters in assessing whether the Anti-Injunction Act applies. Even the Government concedes that when there is "too attenuated a chain of connection" between an upstream duty and a "downstream tax," a court should not view a suit challenging the duty as aiming to "restrain the assessment or collection of a tax." Tr. of Oral Arg. 38–39.[2] That principle favors CIC here. CIC stands nowhere near the cusp of tax liability: Between the upstream Notice and the downstream tax, the river runs long. So it is again hard to characterize this suit's purpose as enjoining a tax.

Third, violation of the Notice is punishable not only by a tax, but by separate criminal penalties. As noted above, any "[w]illful failure" to comply with the Notice's reporting rules can lead to as much as a year in prison. § 7203; see *supra*, at 214. That fact clinches the case for treating a suit brought to set aside the Notice as different from one brought to restrain its back-up tax. For the existence of criminal penalties explains why an entity like CIC must bring an action in just this form, framing its requested relief in just this

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[2] The Government's own example proves our point. Environmental Protection Agency (EPA) regulations governing the resale of diesel fuel are enforced in part through a penalty that Congress has deemed a tax, in just the way it has the penalty here. See §§ 6720A(a), 6671(a). The Government concedes that "a court might well conclude" that a suit to enjoin the enforcement of the EPA regulations is "not one 'for the purpose of restraining' tax assessment or collection, even if" a ruling for the plaintiff would "have an eventual downstream impact on the IRS's collection of the [tax] penalty." Brief for Respondents 44. But that example is no different from this case, save that here the IRS, not the EPA, administers the regulatory mandate. And that one variance should not matter. As explained above, an IRS reporting requirement absent a tax penalty no more triggers the Anti-Injunction Act than an EPA rule does. See *Direct Marketing Assn.* v. *Brohl*, 575 U. S. 1, 11–12 (2015); *supra*, at 216–217. So adding an identical tax penalty to each of those regulatory schemes should affect the Anti-Injunction Act analysis in the same way—which is to say, not at all.

way. Recall what the Government would have such a party do: disobey the Notice, pay a resulting tax penalty, and then bring a refund suit. See Brief for Respondents 16–17; *supra,* at 215. That approach—not the Anti-Injunction Act's familiar pay-now-sue-later procedure, but one with law-breaking at the start—subjects the party to criminal punishment.[3] And that is not the kind of thing an ordinary person risks, even to contest the most burdensome regulation. So the criminal penalties here practically necessitate a pre-enforcement, rather than a refund, suit—if there is to be a suit at all. And so too, those penalties necessitate a suit aimed at eliminating the Notice, rather than the statutory tax penalty. Only an injunction against the Notice gives the taxpayer or advisor what it wants: relief from the obligation to report transactions. An injunction against the tax penalty would not do so. Because such an injunction would leave both the reporting duty and the criminal penalty untouched, the taxpayer or advisor would still have to accede to the Notice's demands on pain of prison time. Small wonder that CIC's complaint asks for an injunction against the Notice, not one against the tax penalty helping to enforce it. Contrary to the Government's assertion, those injunctions are not two sides of one coin.

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[3] The Government suggests that criminal liability would not attach to a taxpayer or advisor who refuses to comply with the Notice out of a "good faith" objection to its validity. Brief for Respondents 46. It is easy to see why the Government wishes that were true: In none of our Anti-Injunction Act cases has postponing a taxpayer's suit until after payment exposed him to criminal penalties—because in no other case has that approach required a taxpayer to break a law in the first instance. But this Court's precedent precludes the Government's effort to erase the criminal penalties from this case. We have held in no uncertain terms that "a defendant's views about the validity" of a tax provision—even if held "in good faith"—do not "negate[ ] willfulness or provide[ ] a defense to criminal prosecution." *Cheek* v. *United States*, 498 U. S. 192, 204, 206 (1991). So in failing to report transactions as the Notice requires, an advisor like CIC would risk criminal punishment.

For all these reasons, the purpose of CIC's suit is not to "restrain[ ] the assessment or collection of [a] tax." § 7421(a). The complaint, and particularly the relief sought, targets the Notice's reporting rule, asking that it be set aside as a violation of the APA. And nothing in that request smacks of artful pleading. To the contrary. That the Notice imposes an affirmative duty independent of the tax, entailing its own substantial costs; that the Notice and tax may remain forever divorced, depending on both CIC's and the IRS's choices; that not only the tax but also criminal penalties backstop the Notice—these facts, when combined, readily explain why CIC's suit targets the upstream reporting mandate, not the downstream tax. And because that is the suit's aim, the Anti-Injunction Act imposes no bar.

B

The Government worries that a ruling for CIC will enfeeble the Anti-Injunction Act. If CIC can bring this suit now, the Government claims, a wave of pre-enforcement actions will follow. Canny plaintiffs will assert non-tax reasons (including objections to regulatory demands) for contesting the imposition of taxes. See Brief for Respondents 32, 38. And in that way, taxpayers will obtain just what the Anti-Injunction Act is meant to foreclose—orders "preemptively shield[ing]" their activities or transactions from "tax consequences." *Id.*, at 219–223. More and more, the Government warns, tax litigation will shift from refund actions to pre-enforcement suits. And the IRS's ability to assess and collect taxes will decline in proportion.

The Government, however, much overstates the possible consequences of today's ruling. As we have explained, this suit falls outside the Anti-Injunction Act because the injunction it requests does not run against a tax at all. See *supra*, at 219–223. The suit contests, and seeks relief from, a separate legal mandate; the tax appears on the scene—as criminal penalties do too—only to sanction that mandate's violation. Or as Judge Nalbandian put the point below: "[T]his is not a dispute over taxes." 925 F. 3d, at 259; see *supra,* at 215. By contrast, the kind of case the Government invokes in making its floodgates claim is a conflict over taxes, whether on earning income, or selling stock, or entering into a business transaction. In such a case, the legal rule at issue is a tax provision. The tax does not backstop the violation of another law that independently prohibits or commands an action. Instead, the tax imposes a cost on perfectly legal behavior. So there is no target for an injunction other than the command to pay the tax; there is no non-tax legal obligation to restrain. Given that fact, the Anti-Injunction Act bars pre-enforcement review, prohibiting a taxpayer from bringing (as the Government fears) a "preemptive[ ]" suit to foreclose tax liability. Brief for Respondents 13. And it does so always—whatever the taxpayer's subjective reason for contesting the tax at issue. If the dispute is about a tax rule—as it is in the run-of-the-mine suits the Government raises—the sole recourse is to pay the tax and seek a refund.

That is just as true when the tax in question is a so-called regulatory tax—that is, a tax designed mainly to influence private conduct, rather than to raise revenue. This Court has long since "abandoned the view that bright-line distinctions exist between regulatory and revenue-raising taxes." *Bob Jones*, 416 U. S., at 743, n. 17; see *id.*, at 741, n. 12; *Sonzinsky* v. *United States*, 300 U. S. 506, 513 (1937) ("Every tax is in some measure regulatory"). And for just as long, we have rejected the view that regulatory tax cases have a special pass from the Anti-Injunction Act. A century ago, the Court in *Bailey* v. *George*, 259 U. S. 16 (1922), held that the Act barred a pre-enforcement suit challenging a tax intended to discourage the (then lawful) use of child labor. Some 50 years later, the Court in *Bob Jones* and *Americans United* similarly held that the Act barred pre-enforcement suits challenging IRS decisions to revoke the tax-exempt status of entities that had engaged in, respectively, discriminatory conduct and lobbying activity—conduct that was legal but disfavored for tax purposes. See 416 U. S., at 735; 416 U. S., at 755. In doing so, the Court made clear that the plaintiffs' reasons for suing did not matter: It was, for example, irrelevant that Bob Jones University objected to the IRS's "attempt to regulate the admissions policies of private universities." 416 U. S., at 739. Nor did it matter that the tax ruling was in truth an effort to change those policies. Regardless of those facts, the suits sought to prevent the levying of taxes, and so could not go forward. The Anti-Injunction Act, we said then and say again now, draws no distinction between regulatory and revenue-raising tax rules. It applies whenever a suit calls for enjoining the IRS's assessment and collection of taxes—of whatever kind.

What sets this suit apart is that it no more targets a regulatory tax than a revenue-raising one. One last time: CIC's action challenges, in both its substantive allegations and its request for an injunction, a regulatory mandate—a reporting requirement—separate from any tax. Or said otherwise, the suit targets not a regulatory tax, but instead a regulation that is not a tax. Here, the tax functions, alongside criminal penalties, only as a sanction for noncompliance with the reporting obligation. Had Congress, or the IRS acting through a delegation, imposed a tax on micro-captive transactions themselves—and had CIC then brought a pre-enforcement suit to prevent the IRS from applying that tax—the Anti-Injunction Act would have kicked in. Then, CIC would have had to pay the tax and seek a refund. But Congress and the IRS chose a different path. They imposed a non-tax, reporting obligation to address their concerns about micro-captive agreements. And by that choice, they took suits to enjoin their regulatory response outside the Anti-Injunction Act's domain.

III

CIC's suit aims to enjoin a standalone reporting requirement, whose violation may result in both tax penalties and criminal punishment. That is not a suit "for the purpose of restraining the [IRS's] assessment or collection" of a tax, and so does not trigger the Anti-Injunction Act. We reverse the judgment below and remand the case for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SOTOMAYOR, concurring.

I concur because I agree that CIC Services, a material advisor to taxpayers engaged in micro-captive transactions, does not bring this suit "for the purpose of restraining the assessment or collection of any tax," 26 U. S. C. § 7421(a), but rather for the purpose of avoiding the regulatory burdens imposed by Notice 2016–66 (Notice). The three factors identified by the majority, taken in combination, show that this suit falls outside the ambit of the Anti-Injunction Act (AIA): The Notice imposes substantial compliance costs that are unconnected to (and possibly far greater than) CIC Services' potential tax liability; the causal chain connecting the Notice's reporting requirement to any tax is attenuated; and the Notice is enforced by criminal as well as tax penalties. See *ante*, at 219–223.

I write separately to highlight that the answer might be different if CIC Services were a taxpayer instead of a tax advisor. Taxpayers who are subject to reporting requirements backed by tax penalties face a choice: (1) provide information about their own finances to the Internal Revenue Service (IRS), which may in turn use that information to calculate the taxpayers' liability more accurately, or (2) refuse to provide such information and pay a noncompliance penalty, which Congress has deemed a tax. For a given taxpayer, then, a tax on noncompliance may operate as a rough substitute for the tax liability she has evaded by withholding required information. Moreover, compared with their tax advisors, taxpayers may incur less expense in collecting and reporting their own financial information. Such information, after all, is about those taxpayers' own activities and is likely to be in their possession. Hence, while it will often be correct to conclude that a tax advisor challenging an IRS reporting requirement is not doing so "for the purpose of restraining" a tax on noncompliance, the analysis may be different when it comes to taxpayers.

This case provides no occasion for the Court to inquire into the full quantity or variety of IRS reporting requirements that are backed by tax penalties, nor to predetermine whether the AIA would allow hypothetical taxpayers to challenge those requirements in court. Whether such suits may proceed will depend on a context-specific inquiry into "the relief the suit requests" and the "aspects of the regulatory scheme" at issue. *Ante,* at 217, 219. On that understanding, I concur.

JUSTICE KAVANAUGH, concurring.

I join the Court's opinion in full. I write separately to underscore what remains (and does not remain) of *Alexander* v. *"Americans United" Inc.*, 416 U. S. 752 (1974), and *Bob Jones Univ.* v. *Simon*, 416 U. S. 725 (1974), in the wake of the Court's decision today.

In *Americans United* and *Bob Jones*, this Court adopted a straightforward and broad rule for determining whether a pre-enforcement suit is barred by the Anti-Injunction Act. Under that rule, if a pre-enforcement suit would "necessarily preclude" the assessment or collection of a tax, that suit is barred by the Act and the taxpayer needs to bring a refund suit *after* paying the tax. *Bob Jones*, 416 U. S., at 732; see also *Americans United*, 416 U. S., at 760–761. In other words, *Americans United* and *Bob Jones* instruct courts to look to the *effects* of a suit. And if a pre-enforcement suit would have the effect of preventing the assessment or collection of a tax, then that suit is barred by the Anti-Injunction Act.

Many courts have taken *Americans United* and *Bob Jones* at their word. And the Sixth Circuit did so here. In this case, CIC challenged a regulation that was backed by tax penalties—more specifically, penalties that the Tax Code labels as "taxes" for purposes of the Anti-Injunction Act. See 26 U. S. C. § 6671(a). Because invalidating the regulation at issue would "necessarily preclude" the collection of tax penalties (labeled as "taxes" by the Tax Code) stemming from an individual's violation of that regulation, the Sixth Circuit concluded that CIC's pre-enforcement suit was barred by the Anti-Injunction Act under *Americans United* and *Bob Jones*. That was a reasonable conclusion to reach, especially given that CIC's primary argument here is the same basic argument that this Court rejected in both *Americans United* and *Bob Jones*. Compare Brief for Respondent in *Alexander* v. *"Americans United" Inc.*, O. T. 1973, No. 72–1371, p. 25 (It "is clear that the 'purpose' of this law suit" "is not to restrain the assessment or collection of any tax but to challenge the constitutionality of an essentially regulatory Act of Congress"), with Brief for Petitioner 17 ("The purpose of CIC's suit" "is to avoid the burdens of the reporting requirement—not to avoid or dispute any tax liability").

The Court today holds, however, that CIC's pre-enforcement suit is not barred by the Anti-Injunction Act. In so holding, the Court in effect carves out a new exception to *Americans United* and *Bob Jones* for pre-enforcement suits challenging regulations backed by tax penalties. I agree with the Court's decision to narrow *Americans United* and *Bob Jones* because the broad "effects" rule articulated in those decisions is hard to square with the text of the Anti-Injunction Act, which bars only a pre-enforcement "suit for the purpose of restraining the assessment or collection of any tax." § 7421(a). Contrary to some sweeping language in *Americans United* and *Bob Jones*, the Anti-Injunction Act is best read as directing courts to look at the stated *object* of a suit rather than the suit's downstream effects. See *ante*, at 217–218. And for that reason, as the Court explains, the text of the Anti-Injunction Act is best read as distinguishing (i) pre-enforcement suits challenging the regulatory component of a regulatory tax, which remain prohibited because the requested relief necessarily runs against the assessment or collection of a tax, from (ii) pre-enforcement suits challenging a regulation backed by a tax penalty, which may proceed because the requested relief runs against an independent legal obligation.

In short, as I understand the Court's opinion today, the rule going forward is that pre-enforcement suits challenging regulatory taxes or traditional revenue-raising taxes are still ordinarily barred by the Anti-Injunction Act. But pre-enforcement suits challenging regulations backed by tax penalties are ordinarily not barred, even though those suits, if successful, would necessarily preclude the collection or assessment of what the Tax Code refers to as a tax.

With those observations, I join the Court's opinion in full.

BP P. L. C. ET AL. *v.* MAYOR AND CITY COUNCIL OF BALTIMORE

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

No. 19–1189. Argued January 19, 2021—Decided May 17, 2021

Baltimore's Mayor and City Council (collectively City) sued various energy companies in Maryland state court alleging that the companies concealed the environmental impacts of the fossil fuels they promoted. The defendant companies removed the case to federal court invoking a number of grounds for federal jurisdiction, including the federal officer removal statute, 28 U. S. C. § 1442. The City argued that none of the defendants' various grounds for removal justified retaining federal jurisdiction, and the district court agreed, issuing an order remanding the case back to state court. Although an order remanding a case to state court is ordinarily unreviewable on appeal, Congress has determined that appellate review is available for those orders "remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of [Title 28]." § 1447(d). The Fourth Circuit read this provision to authorize appellate review only for the part of a remand order deciding the § 1442 or § 1443 removal ground. It therefore held that it lacked jurisdiction to review the district court's rejection of the defendants' other removal grounds.

Held: The Fourth Circuit erred in holding that it lacked jurisdiction to consider all of the defendants' grounds for removal under § 1447(d). Pp. 237–247.

(a) The ordinary meaning of § 1447(d)'s text permits appellate review of the district court's entire remand order when a defendant relies on § 1442 or § 1443 as a ground for removal. The relevant portion of § 1447(d) provides that "an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal." The "order remanding a case" here rejected *all* of the defendants' grounds for removal because (subject to exceptions not applicable here) the district court was not at liberty to remove the City's case from its docket until it determined that it lacked any authority to entertain the suit. See, *e. g., Carnegie-Mellon Univ.* v. *Cohill,* 484 U. S. 343, 356; see also *Sprint Communications, Inc.* v. *Jacobs,* 571 U. S. 69, 72 ("[C]ourts are obliged to decide cases within the scope of federal jurisdiction" assigned to them). And this case was removed "pursuant to" § 1442 because the defendants relied on § 1442 as

a ground for removal when satisfying the requirements of § 1446. It makes no difference that the defendants removed the case "pursuant to" *multiple* federal statutes. The general removal statute contemplates this possibility when it speaks of actions "removed *solely* under" the diversity jurisdiction statute. § 1446(b)(2)(A) (emphasis added). And § 1447(d) contains no comparable language limiting appellate review to cases removed *solely* under § 1442 or § 1443. The parties' dueling observations that Congress knows how to authorize appellate courts to review every issue in a remand order, see, *e. g.,* 18 U. S. C. § 3595(c)(1), and that Congress also knows how to limit appellate review to particular "questions" rather than the whole "order," see, *e. g.,* 28 U. S. C. § 1295(a)(7), confirms the wisdom of focusing on the language Congress *did* employ. The City's novel contention that the defendants never really removed the case pursuant to § 1442 because no federal court here held that the statute indeed authorized removal is mistaken and has never been adopted by any court. Pp. 237–240.

(b) The Court's most analogous precedent, *Yamaha Motor Corp., U. S. A.* v. *Calhoun,* 516 U. S. 199, resolves any remaining doubt about the best reading of § 1447(d). That case involved a dispute about the meaning of § 1292(b)—a statute allowing a district court to certify "an order" to the court of appeals if it "involves a controlling question of law." The Court held that the statute's grant of appellate review for the "order," meant the entire order was reviewable, not just the part of the order containing the "controlling question of law." *Id.,* at 205. The City suggests that the statute's use of the word "involves" shows that the reviewable issues on appeal can be broader than the certified question. But nothing in *Yamaha* turned on the presence of the word "involves." Instead, as here, the Court focused on the statute's use of the word "order." The Court's decisions in *Murdock* v. *Memphis,* 20 Wall. 590, and *United States* v. *Keitel,* 211 U. S. 370, do not support the City because both decisions were driven by concerns unique to their statutory contexts; their reasoning is not easily generalizable to other jurisdictional statutes; and neither comes nearly as close to the mark as *Yamaha.* The Court's decisions in *Carlsbad Technology, Inc.* v. *HIF Bio, Inc.,* 556 U. S. 635, and *Thermtron Products, Inc.* v. *Hermansdorfer,* 423 U. S. 336—which *permitted* rather than foreclosed appellate review of certain remand orders—similarly do not help the City's cause because they say nothing about the part of § 1447(d) at issue today. Finally, the City argues that, when Congress amended § 1447(d) to add the exception for federal officer removal under § 1442 to the existing exception for civil rights cases under § 1443, Congress ratified lower court decisions that had read the prior version of § 1447(d) as permitting review only of the part of the remand order addressing § 1443's civil rights removal ground. It is most unlikely that a smattering of lower court opinions could ever represent a "broad and unquestioned" judicial consensus that Congress must have been aware of and is presumed to have endorsed. *Jama* v. *Immigration and Customs Enforcement,* 543 U. S. 335, 349. And it certainly cannot do so where, as here, "the text and structure of the statute are to the contrary." *Id.,* at 352. Pp. 240–245.

(c) The City's policy arguments do not alter the result because "even the most formidable" policy arguments cannot "overcome" a clear statutory directive, *Kloeckner* v. *Solis,* 568 U. S. 41, 56, n. 4. While the City argues that allowing exceptions to the bar on appellate review of remand orders will impair judicial efficiency, that is the balance that Congress struck for cases removed pursuant to § 1442 or § 1443. And allowing full appellate review may actually help expedite some cases. The City's contention that the Court's reading of § 1447(d) will invite defendants to frivolously add § 1442 or § 1443 to their other grounds for removal has already been addressed by other statutes and rules, such as § 1447(c), which permits a district court to order a party to pay the costs and expenses of removal, and Federal Rule of Civil Procedure 11(b)–(c), which authorizes courts to sanction frivolous arguments. The Court declines to consider the merits of the defendants' removal grounds and remands for the Fourth Circuit to consider those matters in the first instance. Pp. 245–247.

952 F. 3d 452, vacated and remanded.

Gorsuch, J., delivered the opinion of the Court, in which Roberts, C. J., and Thomas, Breyer, Kagan, Kavanaugh, and Barrett, JJ., joined. Sotomayor, J., filed a dissenting opinion, *post,* p. 247. Alito, J., took no part in the consideration or decision of the case.

Kannon K. Shanmugam argued the cause for petitioners. With him on the briefs were *William T. Marks, Tanya S. Manno, Theodore V. Wells, Jr., Daniel J. Toal, Peter D. Keisler, C. Frederick Beckner III, Theodore J. Boutrous, Jr., Thomas G. Hungar, David C. Frederick, Brendan J. Crimmins, Daniel S. Severson, Philip H. Curtis, Matthew T. Heartney, Kathleen Taylor Sooy, Tracy A. Roman, Honor R. Costello, Nathan P. Eimer, Pamela R. Hanebutt, Ryan J. Walsh, Michelle N. Lipkowitz, Thomas K. Prevas, Sean C. Grimsley, Jameson R. Jones, Martha Thomsen, Megan Berge, Shannon S. Broome,* and *Shawn Patrick Regan.*

Brinton Lucas 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 Clark*, *Deputy Solicitor General Gannon*, and *Jonathan D. Brightbill* and *Eric Grant*, Deputy Assistant Attorneys General, *Jennifer Scheller Neumann*, and *Avi M. Kupfer*.

Victor M. Sher argued the cause for respondents. With him on the brief were *Matthew K. Edling*, and *Martin D. Quiñones*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Indiana et al. by *Curtis T. Hill, Jr.*, Attorney General of Indiana, *Thomas M. Fisher*, Solicitor General, *Kian J. Hudson*, Deputy Solicitor General, and *Corrine L. Youngs* and *Julia C. Payne*, Deputy Attorneys General, by *Clyde Sniffen, Jr.*, Acting Attorney General of Alaska, and by the Attorneys General for their respective States as follows: *Steve Marshall* of Alabama, *Christopher M. Carr* of Georgia, *Derek Schmidt* of Kansas, *Lynn Fitch* of Mississippi, *Eric Schmitt* of Missouri, *Douglas J. Peterson* of Nebraska, *Wayne Stenehjem* of North Dakota, *Alan Wilson* of South Carolina, *Jason R. Ravnsborg* of South Dakota, *Ken Paxton* of Texas, and *Sean D. Reyes* of Utah; for the American Petroleum Institute by *William M. Jay*, *Andrew Kim*, and *Paul G. Afonso*; for the Atlantic Legal Foundation by *Lawrence S. Ebner*; for DRI–The Voice of the Defense Bar by *Matthew T. Nelson*; for Energy Policy Advocates by *Matthew D. Hardin*; for the National Association of Manufacturers et al. by *Philip S. Goldberg*, *Linda E. Kelly*, and *Patrick Hedren*; for the Washington Legal Foundation by *John M. Masslon II* and *Cory L. Andrews*; and for Gen. Richard B. Myers (Ret.) et al. by *Tristan L. Duncan*. *Zachary D. Tripp* filed a brief for the Chamber of Commerce of the United States of America as *amicus curiae* urging vacatur.

Briefs of *amici curiae* urging affirmance were filed for the State of New York et al. by *Letitia James*, Attorney General of New York, *Barbara D. Underwood*, Solicitor General, *Steven C. Wu*, Deputy Solicitor General, and *Matthew W. Grieco*, Assistant Solicitor General, by *Peter F. Neronha*, Attorney General of Rhode Island, *Neil F. X. Kelly*, Assistant Attorney General, and *Tricia O'Hare Jedele* and *Alison B. Hoffman*, Special Assistant Attorneys General, and by the Attorneys General for their respective jurisdictions as follows: *Xavier Becerra* of California, *William Tong* of Connecticut, *Kathleen Jennings* of Delaware, *Karl A. Racine* of the District of Columbia, *Clare E. Connors* of Hawaii, *Kwame Raoul* of Illinois, *Aaron M. Frey* of Maine, *Maura Healey* of Massachusetts, *Dana Nessel*

JUSTICE GORSUCH delivered the opinion of the Court.

This case began when Baltimore's mayor and city council sued various energy companies for promoting fossil fuels while allegedly concealing their environmental impacts. But the merits of that claim have nothing to do with this appeal. The only question before us is one of civil procedure: Does 28 U. S. C. § 1447(d) permit a court of appeals to review any issue in a district court order remanding a case to state court where the defendant premised removal in part on the federal officer removal statute, § 1442, or the civil rights removal statute, § 1443?

I

Three years ago, Baltimore's mayor and city council (we refer to them collectively as the City) filed suit in Maryland state court. The City's complaint included a number of state-law causes of action, but most centered on the defendants' alleged failure to warn about the dangers of their products—and the injuries the City says it suffered as a result.

Soon after the City filed suit, the defendants removed the case to federal court. In support of their action, the defendants invoked a variety of federal statutes. Most relevant for our purposes, they pointed to a provision that promises a federal forum for any action against an "officer (or any person acting under that officer) of the United States or of

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of Michigan, *Keith Ellison* of Minnesota, *Aaron Ford* of Nevada, *Gurbir S. Grewal* of New Jersey, *Hector Balderas* of New Mexico, *Joshua H. Stein* of North Carolina, *Ellen F. Rosenblum* of Oregon, *Thomas J. Donovan, Jr.*, of Vermont, *Mark R. Herring* of Virginia, and *Robert W. Ferguson* of Washington; for the Chesapeake Bay Foundation et al. by *Ian Fein, Pete Huffman*, and *Jon A. Mueller*; for State and Local Government Groups by *Robert S. Peck* and *Lisa Soronen*; for Erwin Chemerinsky et al. by *William A. Rossbach*; and for Sen. Sheldon Whitehouse et al. by *Gerson H. Smoger.*

Marco B. Simons, Richard L. Herz, Michelle C. Harrison, Kevin S. Hannon, and *David Bookbinder* filed a brief for Boulder County, Colorado et al. as *amici curiae.*

any agency thereof, in an official or individual capacity, for or relating to any act under color of such office." 28 U. S. C. § 1442(a)(1).

This statute authorized the removal of the City's suit, the defendants said, because some of their challenged exploration, drilling, and production operations took place at the federal government's behest. The companies also identified a number of other statutes that they believed independently supported removal: the federal-question statute, 28 U. S. C. § 1331; the Outer Continental Shelf Lands Act, 92 Stat. 657, 43 U. S. C. § 1349(b); the admiralty jurisdiction statute, 28 U. S. C. § 1333; and the bankruptcy removal statute, 28 U. S. C. § 1452.

Once the case arrived in federal court, the City filed a motion seeking to have it remanded back to state court. The City argued that none of the companies' grounds for removal justified retaining federal jurisdiction. In an extensive order, the district court reviewed each of the defendants' cited bases for removal before ultimately agreeing with the City and remanding the case to state court.

Normally that would have ended the matter. Since at least 1949, federal appellate courts have generally lacked the power to review a district court order remanding a case to state court. See Act of May 24, 1949, § 84, 63 Stat. 102. But like most rules, this one has accrued exceptions with time. In the Civil Rights Act of 1964, Congress created an exception allowing appellate review for cases " 'removed pursuant to' " 28 U. S. C. § 1443, a provision that guarantees a federal forum for certain federal civil rights claims. See § 901, 78 Stat. 266. So before a civil rights case is returned to state court, a federal court of appeals usually *can* intervene to test the soundness of the district court's remand order.

In 2011, Congress added a similar exception for suits against federal officers or agencies removed pursuant to 28 U. S. C. § 1442. See Removal Clarification Act, § 2, 125 Stat.

545–546. Here, too, Congress has deemed it appropriate to allow appellate review before a district court may remand a case to state court. All told, then, the law as it stands today provides that "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise." 28 U. S. C. § 1447(d).

After the district court ordered the City's case remanded to state court, the defendants sought to appeal—and this much everyone seemed to agree they were free to do. After all, the defendants had relied on the federal officer removal statute found in § 1442 when they removed the case to federal court—and the current version of § 1447(d) permits an appeal in just these circumstances. The real trouble began only when it came to the scope of the defendants' appeal. The Fourth Circuit read § 1447(d) as authorizing it to review only the *part* of the district court's remand order discussing § 1442. As a result, the court of appeals refused to consider whether the district court may have erred when it rejected the defendants' other grounds for removal. Finding (only) the district court's § 1442 analysis sound, the Fourth Circuit proceeded to affirm. 952 F. 3d 452 (2020).

This ruling highlighted a circuit split. The Seventh Circuit, for example, has reasoned that § 1447(d) extends appellate review to the *whole* of an " 'order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443.' " See *Lu Junhong* v. *Boeing Co.*, 792 F. 3d 805, 811 (2015). On that reading of the statute, appellate review is not confined to a defendant's removal arguments under the federal officer and civil rights removal statutes. Instead, a court of appeals may review the merits of all theories for removal that a district court has rejected. Because the courts of appeals disagree over the scope of their appellate authority under § 1447(d), we agreed to take this case to resolve the question. 591 U. S. 1080 (2020).

II

A

When called on to interpret a statute, this Court generally seeks to discern and apply the ordinary meaning of its terms at the time of their adoption. *Niz-Chavez* v. *Garland*, 593 U. S. 155, 160 (2021). Here, the relevant portion of § 1447(d) provides that "an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal."

To our minds, the first telling clue lies in the statute's use of the term "order." Whether we look to the time of § 1447(d)'s adoption or amendment, a judicial "order" meant then what it means today: a "written direction or command delivered by . . . a court or judge."[1] So an "order remanding a case" was (and is) a formal command from a district court returning the case to state court. In this case, the district court's remand order rejected *all* of the defendants' grounds for removal. For good reason too. Normally, federal jurisdiction is not optional; subject to exceptions not relevant here, "courts are obliged to decide cases within the scope of federal jurisdiction" assigned to them. *Sprint Communications, Inc.* v. *Jacobs*, 571 U. S. 69, 72 (2013). So the district court wasn't at liberty to remove the City's case from its docket until it determined that it lacked any authority to entertain the suit. See, *e. g.*, *Carnegie-Mellon Univ.* v. *Cohill*, 484 U. S. 343, 356 (1988). From this it would seem to follow that, when a district court's removal order rejects all of the defendants' grounds for removal, § 1447(d) authorizes a court of appeals to review each and every one of them. After all, the statute allows courts of appeals to examine the whole of a district court's "order," not just some of its parts or pieces.

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[1] Black's Law Dictionary 1322 (11th ed. 2019); see also *id.*, at 1206 (9th ed. 2009); *id.*, at 1247 (rev. 4th ed. 1968) ("Every direction of a court or judge made or entered in writing, and not included in a judgment"); *id.*, at 1247 (4th ed. 1951) (same); *id.*, at 1298 (3d ed. 1933) (same).

Of course, § 1447(d) extends appellate review only to *some* orders—those remanding a "case . . . removed pursuant to section 1442 or 1443." But it's hard to see how that qualification changes the calculus. To remove a case, a defendant must comply with 28 U. S. C. § 1446. Essentially, that statute requires the defendant to provide affected parties and courts with a notice stating its grounds for removal. §§ 1446(a), (d). The combination of these actions "effect[s] the removal." § 1446(d). To remove a case "pursuant to" § 1442 or § 1443, then, just means that a defendant's notice of removal must assert the case is removable "in accordance with or by reason of" one of those provisions.[2] Here, everyone admits the defendants' notice of removal did just that by citing § 1442 as one of its grounds for removal. Once that happened and the district court ordered the case remanded to state court, the whole of its order became reviewable on appeal.

Nor does it matter if (as here) a defendant removes a case "pursuant to" *multiple* federal statutes. Often enough, parties act pursuant to a variety of legal authorities. A criminal defendant may suggest he is eligible for sentencing relief pursuant to multiple provisions. *E. g., Pepper* v. *United States*, 562 U. S. 476, 481, n. 1 (2011). A civil litigant might file a complaint pursuant to more than one statute. *E. g., Rimini Street, Inc.* v. *Oracle USA, Inc.*, 586 U. S. 334, 337 (2019). Likewise, a party may assert multiple grounds for removing a case to federal court—as the defendants did here. Indeed, the general removal statute contemplates just this possibility when, in contrast, it speaks of actions "removed *solely* under" the diversity jurisdiction statute. § 1446(b)(2)(A) (emphasis added). Yet, the particular provision at issue before us does not contain any compa-

[2] Black's Law Dictionary, at 1401 (rev. 4th ed. 1968); *id.*, at 1401 (4th ed. 1951); see also *SAS Institute, Inc.* v. *Iancu*, 584 U. S. 357, 371 (2018) ("in accordance with"); Black's Law Dictionary, at 1493 (11th ed. 2019) ("[i]n compliance with; in accordance with; under"; "[a]s authorized by").

rable language like that limiting appellate review *solely* to issues under § 1442 or § 1443. Instead and again, § 1447(d) permits appellate review of the district court's remand order—without any further qualification.

B

How does the City reply? It suggests that exceptions to statutory rules should be construed narrowly—and that our reading of § 1447(d)'s exception to its general rule against appellate review is too permissive.

We disagree. As a preliminary matter, the factual premise underlying the City's argument is surely contestable. One might just as easily conceive of § 1447(d)'s usual rule barring appellate review as *itself* an exception to the even more general rule that final district court orders are appealable under 28 U. S. C. § 1291. More fundamentally, the City's legal premise is also in error. This Court has " 'no license to give statutory exemptions anything but a fair reading.' " *Food Marketing Institute* v. *Argus Leader Media*, 588 U. S. 427, 439 (2019) (brackets omitted). Exceptions and exemptions are no less part of Congress's work than its rules and standards—and all are worthy of a court's respect. That a law might temper its pursuit of one goal by accommodating others can come as no surprise. Often legislation becomes possible only because of such compromises. Often lawmakers tread in areas fraught with competing social demands where everyone agrees trade-offs are required. Whatever the reason for a legislative compromise, we have no right to place our thumbs on one side of the scale or the other. *Henson* v. *Santander Consumer USA Inc.*, 582 U. S. 79, 89 (2017).

Alternatively, the City suggests that, if Congress had wanted appellate courts to review every issue in a remand order, it would have said as much. Sometimes, the City observes, Congress does exactly that, expressly directing courts to resolve "all" legal issues in certain cases. See

Brief for Respondent 21 (citing 18 U. S. C. § 3595(c)(1); 5 U. S. C. § 1508; 38 U. S. C. § 7104(a); and 33 U. S. C. § 1320(f)). But the defendants remind us that Congress also knows how to limit appellate review to particular "questions" rather than the whole of a district court's "order"; sometimes it does just that too. See Brief for Petitioners 18 (citing 28 U. S. C. § 1295(a)(7); 38 U. S. C. § 7292(b)(1); 42 U. S. C. § 8514(a)(2); 52 U. S. C. § 30110; 28 U. S. C. § 1254(2); 50 U. S. C. § 1803(j)). In the end, all of the parties' fencing about language Congress *didn't* use persuades us of only one thing—that we are best served by focusing on the language it *did* employ.

All of which leaves the City to offer a different argument from a new direction. Now, the City contends, the defendants never really removed this case pursuant to § 1442. On this account, a case is not "removed pursuant to section 1442 or 1443" until a federal court (district or appellate) holds that one of these statutes authorizes removal. Because that never happened here, the City reasons, the defendants were not entitled to *any* appellate review. But this argument isn't only novel—the City didn't pursue it below and no court of appeals has adopted it. It is also mistaken. As we've seen, it is generally a defendant's actions under § 1446 that "effect the removal." Once a defendant complies with § 1446, a state court may not proceed "further unless and until the case is remanded." 28 U. S. C. § 1446(d). That's why normally it's the plaintiff who must seek judicial intervention if it wishes to have the matter remanded to state court—just as the City did here.

III

A

To the extent any doubt remains about how best to read § 1447(d), we believe our most analogous precedent resolves it. In *Yamaha Motor Corp., U. S. A.* v. *Calhoun*, 516 U. S. 199, 204 (1996), this Court faced a dispute about the meaning of 28 U. S. C. § 1292(b). That statute allows a district court to certify "an order" to the court of appeals if it "involves a controlling question of law as to which there is substantial ground for difference of opinion," and if "an immediate appeal from the order may materially advance the ultimate termination of the litigation." In *Yamaha*, the Court asked the parties to address whether § 1292(b) authorizes appellate courts to review any question contained in the district court's order—or whether it allows those courts to address only the "controlling question of law" the district court certified for further review.

The answer there is telling here. The Court held that, "[a]s the text of § 1292(b) indicates, appellate jurisdiction applies to the *order* certified to the court of appeals, and is not tied to the particular question formulated by the district court." 516 U. S., at 205. Although appellate courts "may not reach beyond the certified order to address other orders made in the case," they "may address any issue fairly included within the certified order because it is the *order* that is appealable, and not the controlling question identified by the district court." *Ibid.* (internal quotation marks omitted). Exactly the same might be said of our case: "[B]ecause it is the [district court's removal] *order* that is appealable," a court of appeals "may address any issue fairly included within" it. *Ibid.* (internal quotation marks omitted).

The City seeks to distinguish *Yamaha* but we don't see how we fairly might. The City observes that § 1292(b) allows an appeal from an order that "involves" a controlling question of law. By using the word "involves," the City submits, Congress sought to make plain that the reviewable issues on appeal can be broader than the certified controlling question of law. And, the City stresses, the word "involves" does not appear in § 1447(d). But that is beside the point. Nothing in *Yamaha* turned on the presence of the word "involves" in § 1292(b). Instead, the Court's reasoning centered on the statute's use of the word "order." By allowing appellate courts to review a district court's "order," the

Court explained, Congress had allowed review of any issue fairly encompassed within it. That reasoning applies with no less force here.

B

If *Yamaha* does much to undermine its argument, the City seeks to draw support from other of this Court's cases. Principally, it points to *Murdock* v. *Memphis*, 20 Wall. 590 (1875), and *United States* v. *Keitel*, 211 U. S. 370 (1908). But both decisions were driven by concerns unique to their statutory contexts; their reasoning is not easily generalizable to other jurisdictional statutes; and neither comes nearly as close to the mark as *Yahama*.

Start with *Murdock*. That case involved 28 U. S. C. § 1257, a statute permitting this Court to review certain state court "judgments or decrees." Concerned with the constitutional implications of allowing federal courts to review questions of state law, the Court in *Murdock* construed the statute as authorizing this Court to examine only issues of federal law contained within state court judgments and decrees. See 20 Wall., at 630–632. Along the way, the Court took pains to reserve the question whether Congress could ever authorize this Court to review matters of state law already definitively resolved by state courts. *Id.*, at 633. By contrast, no comparable concern with the Constitution's federal structure exists here. At some level, of course, removal practices implicate questions of comity between federal and state authorities. But today we are asked to decide only whether a federal court of appeals may review one or many federal law rulings issued by an inferior federal court. That comparatively humble question lies nowhere near *Murdock*'s bounds.

Keitel involved the now-repealed Criminal Appeals Act. That law authorized the government to appeal adverse criminal "decision[s] or judgment[s]" based on certain enumerated grounds, such as the invalidity of a federal statute. See ch. 2564, 34 Stat. 1246. For its part, the Court held that this language allowed the government to appeal only the statutorily enumerated questions. 211 U. S., at 398–399. Like *Murdock*, the Court in *Keitel* rested heavily on the statute's context in reaching its conclusion. A new entitlement allowing the government to appeal an adverse criminal judgment was, in the Court's view, "exceptional." 211 U. S., at 399. Meanwhile, here again, nothing in our case implicates that concern.

Closer to home, the City directs our attention to *Carlsbad Technology, Inc.* v. *HIF Bio, Inc.*, 556 U. S. 635, 638 (2009), and *Thermtron Products, Inc.* v. *Hermansdorfer*, 423 U. S. 336, 345–346 (1976). Those cases addressed the first clause of § 1447(d), which generally bars appellate review of remand orders. *Carlsbad* and *Thermtron* held this bar applies only to remand orders premised on a lack of subject matter jurisdiction or a defect in removal procedure; other remand orders remain appealable. See *Carlsbad*, 556 U. S., at 638. The Court said this conclusion was necessary to make sense of § 1447(d)'s interaction with § 1447(c). See *id.*, at 638.

None of this, however, helps the City's cause. Some have questioned *Carlsbad* and *Thermtron*. See, *e. g.*, 556 U. S., at 642 (Stevens, J., concurring); *id.*, at 642–643 (Scalia, J., concurring); *Kakarala* v. *Wells Fargo Bank, N. A.*, 578 U. S. 914 (2016) (Thomas, J., dissenting from denial of certiorari). But even taken on their own terms, both decisions *permitted* rather than foreclosed appellate review of certain remand orders. And the fact that this Court deemed certain orders appealable under the statute's first clause simply does not settle, one way or another, the scope of appellate review under the statute's second clause.

Having exhausted our cases, the City seeks support in lower court decisions. It draws our attention to 2011 when Congress amended § 1447(d) to authorize appellate review of remand orders in cases removed under the federal officer statute. By that time, the City says, a number of courts of appeals had already interpreted the prior version of § 1447(d) that allowed appeals from remand orders in cases removed under the Civil Rights Act. And many of those courts had read § 1447(d) as permitting them to review only the part of a remand order addressing the civil rights removal ground. From this fact, the City reasons, it follows that Congress implicitly ratified and endorsed parallel limits on appellate review when it adopted its 2011 amendments.

Again, we do not see it. It seems most unlikely to us that a smattering of lower court opinions could ever represent the sort of "judicial consensus so broad and unquestioned that we must presume Congress knew of and endorsed it." *Jama* v. *Immigration and Customs Enforcement*, 543 U. S. 335, 349 (2005). And it certainly cannot do so where, as here, "the text and structure of the statute are to the contrary." *Id.*, at 352. This Court bears no "warrant to ignore clear statutory language on the ground that other courts have done so." *Milner* v. *Department of Navy*, 562 U. S. 562, 576 (2011). Our duty is to follow the law as we find it, not to follow rotely whatever lower courts once might have said about it.

Separately, the City worries that our interpretation might upset lower court decisions on a *different* question. The City points out that, when a district court remands a case, it may require the defendant to pay certain of the plaintiff's fees and costs. See 28 U. S. C. § 1447(c). While § 1447(d) generally precludes appellate review of remand orders, many lower courts have suggested that these § 1447(c) fee and cost awards are nonetheless reviewable on appeal. The City contends that our reading of § 1447(d) could put an end to all that. It could, the City reasons, because if an "order remanding a case" really means the whole order, then the statute may bar appellate review of fee and cost awards contained within those orders. That much, however, does not necessarily follow. Often enough fee and cost awards are treated as collateral to the merits and independently appealable. See, *e. g.*, *Budinich* v. *Becton Dickinson & Co.*, 486

U. S. 196, 200 (1988). In any event, the question is not presented in this case and we do not purport to resolve it.

IV

The City concludes by asking us to consider the policy consequences that follow from giving the text its ordinary meaning. Barring appellate review of remand orders, the City says, serves the worthy goal of allowing the parties to get on with litigating the merits of their cases in state court. Meanwhile, the City submits, allowing exceptions to this rule promises only to impair that efficiency interest.

The difficulties with this argument are by now familiar. As this Court has explained, "even the most formidable" policy arguments cannot "overcome" a clear statutory directive. *Kloeckner* v. *Solis*, 568 U. S. 41, 56, n. 4 (2012). Besides, everyone agrees that the statute tempers its obvious concern with efficiency when it comes to cases removed pursuant to § 1442 or § 1443. For that subset of cases, Congress has expressed a heightened concern for accuracy, authorized appellate review, and accepted the delay it can entail. The fact that the law as written allows appellate courts to examine *all* (and not just *some*) removal grounds in these cases perhaps just demonstrates, as Judge Easterbrook has suggested, a congressional judgment that the "marginal delay from adding . . . extra issue[s] to a case where the time for briefing, argument, and decision has already been accepted is likely to be small." See *Lu Junhong*, 792 F. 3d, at 813.

In fact, allowing a fuller form of appellate review may actually help expedite some appeals. Suppose a court of appeals finds the § 1442 or § 1443 issue a difficult and close one, but believes removal is clearly and easily warranted on another basis. Allowing the court to address that easier question and avoid harder ones may facilitate a prompter resolution of the proceeding for all involved. At the least, a rational Congress could have thought that considerations like these warranted allowing a court of appeals the power to review the whole of a district court's remand order rather than just certain select aspects of it.

That leaves the City to argue about different consequences. It warns that our interpretation will invite gamesmanship: Defendants may frivolously add § 1442 or § 1443 to their other grounds for removal, all with an eye to ensuring appellate review down the line if the case is remanded. But the answers here too are familiar. Once more, this Court's task is to discern and apply the law's plain meaning as faithfully as we can, not "to assess the consequences of each approach and adopt the one that produces the least mischief." *Lewis* v. *Chicago*, 560 U. S. 205, 217 (2010).

Nor is it as if Congress has been blind to the City's concerns. As the City itself acknowledges, thanks to § 1447(c) a district court may order a defendant to pay the plaintiff's costs and expenses (including attorney's fees) if it frivolously removes a case from state court. Additionally, the Federal Rules of Civil Procedure allow courts to sanction frivolous arguments made in virtually any context. Rules 11(b)–(c). Congress, thus, has already addressed the City's concerns in *other* statutes and rules—just not in § 1447(d). To the extent that experience may prove these other measures insufficient, Congress is of course free to revise its work anytime. But that forum, not this one, is the proper place for such lawmaking.

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The Fourth Circuit erred in holding that it was powerless to consider all of the defendants' grounds for removal under § 1447(d). In light of that error, the defendants ask us to consider some of those additional grounds ourselves. That task, however, does not implicate the circuit split that we took this case to resolve and we believe the wiser course is to leave these matters for the Fourth Circuit to resolve in the first instance. See *Brownback* v. *King*, 592 U. S. 209, 215, n. 4 (2021). The judgment of the Fourth Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion.

So ordered.

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

JUSTICE SOTOMAYOR, dissenting.

Civil defendants in state court may remove a case to federal district court by asserting one or more bases for federal jurisdiction. If the district court concludes that the case was improperly removed, it issues an order remanding the case back to state court. For more than a century, the rule has been that such remand orders are generally not subject to appellate review. See *In re Pennsylvania Co.*, 137 U. S. 451, 453–454 (1890). This rule, codified at 28 U. S. C. § 1447(d), "reflects Congress's longstanding policy of not permitting interruption of the litigation of the merits of a removed case by prolonged litigation of questions of jurisdiction of the district court to which the cause is removed." *Powerex Corp.* v. *Reliant Energy Services, Inc.*, 551 U. S. 224, 238 (2007) (internal quotation marks omitted).

Originally, there were no exceptions to § 1447(d)'s bar on appellate review. See § 1447(d) (1946 ed., Supp. III). Then, as part of the Civil Rights Act of 1964, Congress created appellate jurisdiction over " 'order[s] remanding a case to the State court from which it was removed pursuant to section 1443,' " the civil rights removal statute. § 901, 78 Stat. 266, 28 U. S. C. § 1447(d) (1964 ed.). In 2011, Congress extended this exception to cases removed pursuant to § 1442, the federal officer removal statute. See § 1447(d) (2012 ed.).

The Court today holds that a defendant who invokes either § 1442 or § 1443 when removing a case to federal court is entitled to appellate review of not just those grounds, but also any other grounds for removal the defendant asserts. I disagree. That interpretation lets defendants sidestep §1447(d)'s bar on appellate review by shoehorning a §1442 or §1443 argument into their case for removal. In other words, it lets the exception swallow the rule. Furthermore, when Congress amended §1447(d) to permit appellate review of decisions under §1442, every Court of Appeals to have addressed the question interpreted §1447(d) to permit appellate review of arguments under §1443 only, not of other arguments for removal addressed in the same order. If Congress wanted to disturb that consensus, it would have said so. I respectfully dissent.

I

Section 1447(d) permits appellate review of "an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443." Everyone agrees how this provision operates in two scenarios. First, if a defendant removes a suit to federal court without invoking either §1442 or §1443, appellate courts may not review the district court's remand order. Second, if a defendant removes a suit solely under §1442 or §1443, appellate review is available for the remand order addressing that single ground for removal.

But what if a defendant removes a case to federal court on multiple grounds, only one of which is §1442 or §1443? Section 1447(d) does not speak clearly to that scenario. In some statutes, Congress takes care to specify when it means "this and only this ground." See, *e. g.,* §1446(b)(2)(A) (addressing civil actions "removed solely under section 1441(a)"). Other times, Congress makes clear that reliance on a certain ground even "in part" will suffice. See, *e. g.,* §1295(a)(2) (providing for jurisdiction in the Court of Appeals for the Federal Circuit over certain district court decisions "if the jurisdiction of that court was based, in whole or in part, on section 1346 of this title"). Section 1447(d) contains neither kind of clarifying language, leaving uncertain how the provision applies to cases that are not removed under §1442 or §1443 alone. See *Board of Cty. Comm'rs of*

Boulder Cty. v. *Suncor Energy (U. S. A.) Inc.*, 965 F. 3d 792, 805 (CA10 2020) (Section 1447(d) "does not expressly contemplate the situation in which removal is done pursuant to one of these sections *and* other grounds" (internal quotation marks omitted)).

There are three possible ways forward. The first possibility is that § 1447(d) permits appellate review of any asserted basis for removal so long as the suit was removed in part pursuant to § 1442 or § 1443. That is the interpretation urged by petitioners and adopted by the Court today. See *ante*, at 237–239. The problem with this interpretation is that it stretches the exception in § 1447(d) too far. It allows defendants to bootstrap their entire case for removal into the court of appeals simply by tacking on an argument under § 1442 or § 1443. Indeed, under this interpretation, a defendant could formally abandon its argument under § 1442 or § 1443 and seek an appeal exclusively of other grounds for removal. See Tr. of Oral Arg. 34–36, 40–41. That bizarre outcome, inexplicable in light of the manifest objective of limiting the exceptions in § 1447(d), cautions heavily against this interpretation.

Another possibility is that a suit removed pursuant to multiple grounds is not a suit removed pursuant to § 1442 or § 1443 at all, meaning no appellate review whatsoever is available under § 1447(d). For good reason, no one advocates this interpretation. Such a rule would certainly avoid prolonged disputes about whether a case belongs in state or federal court, but only by denying appellate review for claims of jurisdiction under the federal-officer and civil-rights removal statutes. That result is hard to square with Congress' express directive that such claims get a second look.

The third possibility is that § 1447(d) allows appellate review of a defendant's assertion of removal jurisdiction under the federal-officer or civil-rights removal statute alone. Any other grounds for removal would remain subject to § 1447(d)'s bar on appellate review. This interpretation best accords with "Congress's longstanding policy of not permitting interruption of the litigation of the merits of a removed case" with lengthy jurisdictional disputes, *Powerex Corp.*, 551 U. S., at 238 (internal quotation marks omitted), while still allowing review of the two grounds Congress carved out for special treatment. It also follows this Court's usual policy of construing both statutory exceptions and procedures for removal narrowly. See *Maracich* v. *Spears*, 570 U. S. 48, 60 (2013) (Statutory exceptions are to be "narrowly [construed] in order to preserve the primary operation of the provision" (internal quotation marks omitted)); *Syngenta Crop Protection, Inc.* v. *Henson*, 537 U. S. 28, 32 (2002) ("[S]tatutory procedures for removal are to be strictly construed" out of respect for state sovereignty).

Over the course of several decades, eight Courts of Appeals (every one to consider the question) adopted this third view of § 1447(d).* See, *e. g., Patel* v. *Del Taco, Inc.*, 446 F. 3d 996, 998 (CA9 2006); *Alabama* v. *Conley*, 245 F. 3d 1292, 1293, n. 1 (CA11 2001) (*per curiam*); *Thornton* v. *Holloway*, 70 F. 3d 522, 524 (CA8 1995); *State Farm Mut. Auto Ins. Co.* v. *Baasch*, 644 F. 2d 94, 96–97 (CA2 1981) (*per curiam*); *Detroit Police Lieutenants and Sergeants Assn.* v. *Detroit*, 597 F. 2d 566, 567–568 (CA6 1979) (*per curiam*); *Noel* v. *McCain*, 538 F. 2d 633, 635 (CA4 1976); *Robertson* v. *Ball*, 534 F. 2d 63, 65–66 (CA5 1976) (*per curiam*); *Pennsylvania ex rel. Gittman* v. *Gittman*, 451 F. 2d 155, 156–157 (CA3 1971) (*per curiam*).

Congress legislated against the backdrop of this consensus when, in 2011, it amended § 1447(d) to extend its appellate-

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*The Tenth Circuit had also reached this conclusion prior to Congress amending § 1447(d), albeit in an unpublished opinion. See *Sanchez* v. *Onuska*, 2 F. 3d 1160 (Table), 1993 WL 307897, *1 (1993) (*per curiam*). The Tenth Circuit has since reaffirmed that holding in a published opinion. See *Board of Cty. Comm'rs of Boulder Cty.* v. *Suncor Energy (U. S. A.) Inc.*, 965 F. 3d 792, 802, n. 6 (2020).

review exception, which previously applied to § 1443 alone, to cover § 1442 as well. Critically, Congress did not amend the remainder of the provision. Instead, it simply added the words "1442 or." See Removal Clarification Act, 125 Stat. 546. Had Congress disagreed with the settled interpretation of § 1447(d), it presumably would have done something about it.

The Court dismisses the possibility of congressional ratification by characterizing an unbroken line of decisions from two-thirds of the Courts of Appeals spanning nearly half a century as "a smattering of lower court opinions." *Ante*, at 244. I would not assume that so many decisions reaching the same conclusion over such a long period were beneath Congress' notice. " 'If a word or phrase has been given a uniform interpretation by inferior courts, a later version of that act perpetuating the wording is presumed to carry forward that interpretation.' " *Texas Dept. of Housing and Community Affairs* v. *Inclusive Communities Project, Inc.*, 576 U. S. 519, 536 (2015) (quoting A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 322 (2012); ellipses omitted). That Congress did not disturb the prevailing interpretation of § 1447(d) is a compelling reason this Court should not either.

II

The Court sees things differently. In its view, it "does [not] matter" whether "a defendant removes a case 'pursuant to' *multiple* federal statutes" or just one. *Ante*, at 238. Either way, § 1447(d) grants the court of appeals jurisdiction over the "order" remanding the case back to state court. According to the Court, once the court of appeals takes jurisdiction over an order, it necessarily takes jurisdiction over all grounds for removal encompassed within it.

In support of this theory, the Court looks to *Yamaha Motor Corp., U. S. A.* v. *Calhoun*, 516 U. S. 199 (1996). That case concerned 28 U. S. C. § 1292(b), a distinct statute that permits appellate review of an interlocutory "order not otherwise appealable" if the district court certifies that the order "involves a controlling question of law as to which there is substantial ground for difference of opinion." § 1292(b). Looking to "the text of § 1292(b)," the *Yamaha* Court determined that, having taken jurisdiction over a § 1292(b) order, a court of appeals may reach any issue fairly encompassed within it. 516 U. S., at 205. In the Court's view today, *Yamaha* means that appellate review of a remand order under § 1447(d) must likewise be plenary.

Yamaha does not do the work the Court says it does. Section 1292(b) provides that an interlocutory order is appealable if it merely "involves" a certified issue. There was thus no question in *Yamaha* that § 1292(b) accounts for certified orders that address multiple issues, some of which are not "controlling question[s] of law as to which there is substantial ground for difference of opinion." § 1292(b). Section 1447(d) lacks comparable language about what happens when a party removes a case on multiple grounds. That is precisely what makes it ambiguous.

The Court is left with the premise that appellate jurisdiction over an order (as with a judgment, decree, or sentence) usually means jurisdiction over all legal issues addressed within it. *Ante*, at 237–239. I agree that this premise will often hold true. But not always, as the Court itself recognizes. See *ante*, at 242–243 (discussing *Murdock* v. *Memphis*, 20 Wall. 590 (1875), and *United States* v. *Keitel*, 211 U. S. 370 (1908)). Context matters. To recap, in 1964, Congress created a limited exception for claims of removal under § 1443 to what had long been an absolute prohibition on appellate review of remand orders. After nearly half a century of courts interpreting that exception narrowly, Congress extended the exception to § 1442 without otherwise amending § 1447(d). Section 1447(d) only unambiguously permits appellate review over remand orders that are based solely on one of those two grounds. Granting defendants appellate review of other grounds of removal whenever they tack on an argument under § 1442 or § 1443 would allow the exception to trump the rule. In these circumstances, the Court should seek an interpretation of § 1447(d) that not only respects its carveout for arguments under § 1442 and § 1443 but also preserves its general bar on appellate review.

III

Unfortunately, I fear today's decision will reward defendants for raising strained theories of removal under § 1442 or § 1443 by allowing them to circumvent the bar on appellate review entirely. Look no further than this case. In 2018, the Mayor and City Council of Baltimore sued petitioners for allegedly concealing the connection between fossil fuels and climate change. Petitioners listed eight grounds for removal to federal court, including § 1442. But petitioners now ask only for a ruling that removal was proper under § 1441(a) (*i. e.*, federal-question jurisdiction). Had petitioners relied solely on § 1441(a) before the District Court, as they do now, no one disputes their argument would be unreviewable on appeal.

Not to worry, petitioners assure us: The threat of sanctions will sufficiently deter gamesmanship. While sanctions help ward off egregious misconduct, they are no failsafe. See, *e. g.*, *Martin* v. *Franklin Capital Corp.*, 546 U. S. 132, 141 (2005) ("Absent unusual circumstances, courts may award attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal"). A federal-officer claim can be so weak it is not worth pursuing on appeal, but not so meritless as to warrant sanctions. Again, look to this case. Petitioners no longer advance their argument under § 1442, calling it only "substantial." Brief for Petitioners 35. Yet that argument somehow opens a back door to appellate review that would otherwise be closed to them. Meanwhile, Baltimore, which has already waited nearly three years to begin litigation on the merits, is consigned to waiting once more.

* * *

Section 1447(d) places "broad restrictions on the power of federal appellate courts to review district court orders remanding removed cases to state court." *Things Remembered, Inc.* v. *Petrarca*, 516 U. S. 124, 127 (1995). After today's decision, defendants can sidestep these restrictions by making near-frivolous arguments for removal under § 1442 or § 1443. Congress, of course, can amend § 1447(d) to make even clearer that appellate review of a district court remand order extends to only § 1442 or § 1443. Because I believe § 1447 already bears that meaning, I respectfully dissent.

EDWARDS *v.* VANNOY, WARDEN

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

No. 19–5807. Argued December 2, 2020—Decided May 17, 2021

In 2007, a Louisiana jury found petitioner Thedrick Edwards guilty of armed robbery, rape, and kidnapping. At the time, Louisiana law permitted non-unanimous jury verdicts if at least 10 of the 12 jurors found the defendant guilty. In Edwards's case, 11 of 12 jurors returned a guilty verdict as to some crimes, and 10 of 12 jurors returned a guilty verdict as to others. After Edwards's conviction became final on direct review, Edwards filed a federal habeas corpus petition, arguing that the non-unanimous jury verdict violated his constitutional right to a unanimous jury. The District Court rejected Edwards's claim as foreclosed by *Apodaca* v. *Oregon*, 406 U. S. 404, and the Fifth Circuit denied a certificate of appealability. While Edwards's petition for a writ of certiorari was pending, the Court repudiated *Apodoca* and held that a state jury must be unanimous to convict a criminal defendant of a serious offense. *Ramos* v. *Louisiana*, 590 U. S. 83. Edwards now argues that the *Ramos* jury-unanimity rule applies retroactively on federal collateral review.

Held: The *Ramos* jury-unanimity rule does not apply retroactively on federal collateral review. Pp. 262–276.

(a) A new rule of criminal procedure applies to cases on *direct* review, even if the defendant's trial has already concluded. But the Court has stated that new rules of criminal procedure ordinarily do not apply retroactively on federal *collateral* review. The Court has stated that a new procedural rule will apply retroactively on federal collateral review only if the new rule constitutes a "watershed" rule of criminal procedure. *Teague* v. *Lane*, 489 U. S. 288, 311 (plurality opinion). When the *Teague* Court first articulated that "watershed" exception, however, the Court stated that it was "unlikely" that such watershed "components of basic due process have yet to emerge." *Id.,* at 313. And in the 32 years since *Teague*, the Court has *never* found that any new procedural rule actually satisfies the purported exception. Pp. 262–264.

(b) To determine whether *Ramos* applies retroactively on federal collateral review, the Court must first ask whether *Ramos* announced a new rule of criminal procedure and, if so, whether that rule falls within an exception for watershed rules of criminal procedure that apply retroactively on federal collateral review. The Court concludes that *Ramos* announced a new rule and that the jury-unanimity rule announced by *Ramos* does not apply retroactively on federal collateral review. Pp. 264–272.

(1) The *Ramos* jury-unanimity rule is new because it was not "*dictated* by precedent existing at the time the defendant's conviction became final," *Teague*, 489 U. S., at 301, or "apparent to all reasonable jurists" at that time, *Lambrix* v. *Singletary*, 520 U. S. 518, 528. On the contrary, before *Ramos*, many courts interpreted *Apodaca* to allow for non-unanimous jury verdicts in state criminal trials. And the *Ramos* Court expressly repudiated *Apodaca*. Pp. 265–266.

(2) The new rule announced in *Ramos* does not qualify as a "watershed" procedural rule that applies retroactively on federal collateral review. In an attempt to distinguish *Ramos* from the long line of cases where the Court has declined to retroactively apply new procedural rules, Edwards emphasizes three aspects of *Ramos*: (i) the significance of the jury-unanimity right; (ii) *Ramos*'s reliance on the original meaning of the Constitution; and (iii) the effect of *Ramos* in preventing racial discrimination in the jury process. But the Court has refused to retroactively apply other momentous cases with similar attributes. In *DeStefano* v. *Woods*, 392 U. S. 631, the Court declined to retroactively apply *Duncan* v. *Louisiana*, 395 U. S. 145, even though *Duncan* established the jury right itself. In *Whorton* v. *Bockting*, 549 U. S. 406, the Court declined to retroactively apply *Crawford* v. *Washington*, 541 U. S. 36, even though *Crawford* relied on the original meaning of the Sixth Amendment to restrict the use of hearsay evidence against criminal defendants. And in *Allen* v. *Hardy*, 478 U. S. 255 (*per curiam*), the Court declined to retroactively apply *Batson* v. *Kentucky*, 476 U. S. 79, even though *Batson* held that state prosecutors may not discriminate on the basis of race when exercising individual peremptory challenges. There is no good rationale for treating *Ramos* differently from *Duncan*, *Crawford*, and *Batson*. Pp. 267–271.

(3) Given the Court's numerous precedents holding that landmark and historic decisions announcing new rules of criminal procedure do not apply retroactively on federal collateral review, the Court acknowledges that the watershed exception is moribund and that no new rules of criminal procedure can satisfy the purported exception for watershed rules. Continuing to articulate a theoretical exception that never actually applies in practice offers false hope to defendants, distorts the law, misleads judges, and wastes the resources of defense counsel, prosecutors, and courts. Moreover, no one can reasonably rely on an exception that is non-existent in practice, so no reliance interests can be affected by forthrightly acknowledging reality. The watershed exception must "be regarded as retaining no vitality." *Herrera* v. *Wyoming*, 587 U. S. 329, 342 (internal quotation marks omitted). Pp. 271–272.

Affirmed.

KAVANAUGH, J., delivered the opinion of the Court, in which ROBERTS, C. J., THOMAS, ALITO, GORSUCH, and BARRETT, JJ., joined. THOMAS, J., filed a concurring opinion, in which GORSUCH, J., joined, *post*, p. 276. GORSUCH, J., filed a concurring opinion, in which THOMAS, J., joined, *post*, p. 282. KAGAN, J., filed a dissenting opinion, in which BREYER and SOTOMAYOR, JJ., joined, *post*, p. 295.

André Bélanger argued the cause for petitioner. With him on the briefs were *Yigal Bander*, *James P. Manasseh*, *Collin P. Wedel*, *Andrew B. Talai*, *Jeffrey T. Green*, and *Naomi A. Igra*.

Elizabeth Baker Murrill, Solicitor General of Louisiana, argued the cause for respondent. With her on the brief were *Jeff Landry*, Attorney General of Louisiana, *Shae McPhee*, Deputy Solicitor General, *Josiah M. Kollmeyer*, Assistant Solicitor General, *Hillar Moore*, *Stacy Wright*, and *Jeffrey M. Harris*.

Christopher G. Michel argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Acting Solicitor General Wall*, *Acting Assistant Attorney General Rabbitt*, *Deputy Solicitor General Feigin*, and *Sofia M. Vickery*.*

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*Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union et al. by *David D. Cole*, *Lisa S. Blatt*, *Amy Mason Saharia*, *Cassandra Stubbs*, *Brian W. Stull*, *Ezekiel Edwards*, *Jennesa Calvo-Friedman*, *Bruce Hamilton*, *Clark M. Neily III*, *Jay R. Schweikert*, *Arthur Rizer*, and *John W. Whitehead*; for the Center on Race, Inequality, and the Law et al. by *Deborah N. Archer* and *Vincent M. Southerland*; for the DKT Liberty Project by *Jessica Ring Amunson*; for Former Judges et al. by *Michael R. Dreeben*, *Jeremy R. Girton*, *Yaira Dubin*, *Seth P. Waxman*, and *Alan E. Schoenfeld*; for Human Rights for Kids et al. by *Bennett L. Cohen*, *Tony Torain*, *James Dold*, *Suzanne La Pierre*, *John Ellem*, and *Carol A. Kolinchak*; for Law Professors et al. by *Elizabeth B. Wydra* and *Brianne J. Gorod*; for the National Association of Criminal Defense Lawyers by *Laura G. Ferguson*, *Timothy P. O'Toole*, and *Barbara E. Bergman*; and for JonRe Taylor by *Thomas Frampton*.

Briefs of *amici curiae* urging affirmance were filed for the State of Oregon by *Ellen F. Rosenblum*, Attorney General of Oregon, *Benjamin Gutman*, Solicitor General, and *Doug M. Petrina* and *Christopher A. Perdue*, Assistant Attorneys General; and for the Commonwealth of Puerto

Justice Kavanaugh delivered the opinion of the Court.

Last Term in *Ramos* v. *Louisiana*, 590 U. S. 83 (2020), this Court held that a state jury must be unanimous to convict a criminal defendant of a serious offense. *Ramos* repudiated this Court's 1972 decision in *Apodaca* v. *Oregon*, 406 U. S. 404, which had allowed non-unanimous juries in state criminal trials. The question in this case is whether the new rule of criminal procedure announced in *Ramos* applies retroactively to overturn final convictions on federal collateral review. Under this Court's retroactivity precedents, the answer is no.

This Court has repeatedly stated that a decision announcing a new rule of criminal procedure ordinarily does not apply retroactively on federal collateral review. See *Teague* v. *Lane*, 489 U. S. 288, 310 (1989) (plurality opinion); see also *Linkletter* v. *Walker*, 381 U. S. 618, 639–640, and n. 20 (1965). Indeed, in the 32 years since *Teague* underscored that principle, this Court has announced many important new rules of criminal procedure. But the Court has not applied *any* of those new rules retroactively on federal collateral review. See, *e. g.*, *Whorton* v. *Bockting*, 549 U. S. 406, 421 (2007) (Con-

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Rico by *Isaías Sánchez-Báez,* Solicitor General of Puerto Rico, and *Carlos Lugo-Fiol.*

Briefs of *amici curiae* were filed for the Federal Public Defender for the District of Oregon et al. by *Stephen R. Sady* and *Shaun S. McCrea*; for the Innocence Project New Orleans by *Richard Davis*; for the Lawyers' Committee for Civil Rights Under Law et al. by *Matthew O. Gatewood, Kristen Clarke, Jon M. Greenbaum, Arthur Ago, Noah Baron,* and *John H. Fleming*; for Louisiana Professors of Law by *Herbert V. Larson, Jr.*; for the NAACP Legal Defense & Educational Fund, Inc., by *Sherrilyn A. Ifill, Janai S. Nelson,* and *Samuel Spital*; for the Promise of Justice Initiative et al. by *G. Ben Cohen, E. King Alexander, Jr.,* and *Letty S. Di Giulio*; for the Roderick & Solange MacArthur Justice Center et al. by *Devi M. Rao, Amir H. Ali,* and *John Mills*; and for Edward L. Tarpley, Jr., et al. by *Allison A. Davis* and *Chris J. K. Swift.*

A brief of *amici curiae* was filed for Jonathan F. Mitchell et al. by *Adam K. Mortara, pro se,* and *Taylor A. R. Meehan.*

frontation Clause rule recognized in *Crawford* v. *Washington*, 541 U. S. 36 (2004), does not apply retroactively). And for decades before *Teague*, the Court also regularly declined to apply new rules retroactively, including on federal collateral review. See, *e. g., DeStefano* v. *Woods*, 392 U. S. 631, 635 (1968) (*per curiam*) (jury-trial rule recognized in *Duncan* v. *Louisiana*, 391 U. S. 145 (1968), does not apply retroactively).

In light of the Court's well-settled retroactivity doctrine, we conclude that the *Ramos* jury-unanimity rule likewise does not apply retroactively on federal collateral review. We therefore affirm the judgment of the U. S. Court of Appeals for the Fifth Circuit.

I

On the night of May 13, 2006, in Baton Rouge, Louisiana, Thedrick Edwards and an accomplice kidnapped Ryan Eaton, a student at LSU. As Eaton was getting out of his car, Edwards and his accomplice confronted Eaton at gunpoint and forced him back into the car. Edwards and his accomplice then jumped into the car with Eaton. They drove with Eaton to an ATM where they hoped to withdraw money using Eaton's card. When they discovered that Eaton did not have any money in his account, they drove to Eaton's apartment. Once there, they bound and blindfolded Eaton, rummaged through his apartment, and took some of his belongings to Eaton's car.

After they were back in the car, Edwards and his accomplice coerced Eaton into arranging a meeting with Eaton's girlfriend. They then drove to the girlfriend's apartment and, at gunpoint, forced Eaton to knock on the door. When Eaton's girlfriend opened the door, Edwards and his accomplice rushed inside. Both Edwards and his accomplice were armed, and Edwards's accomplice had his gun drawn. Edwards and his accomplice instructed Eaton, Eaton's girlfriend, and two other women in the apartment to lie on the floor. Edwards then raped one of the women. His accomplice raped another woman. As they left, they grabbed some personal property from the apartment. Edwards and his accomplice hurried back into Eaton's car and drove around the corner. They then abandoned the car and fled.

Two days later, Edwards and his accomplice confronted another man at gunpoint and forced him to withdraw money from an ATM.

Within a day of the second incident, the police collected substantial evidence implicating Edwards in both episodes. The police obtained warrants to search his residence and to arrest him. The day after the police executed the search warrant but before an arrest, Edwards turned himself in to the police and confessed to his crimes. The police videotaped Edwards's confession. (The video is part of the joint appendix. See supremecourt.gov/media/media.aspx.)

Edwards was indicted in Louisiana state court for armed robbery, kidnapping, and rape. Edwards pled not guilty and went to trial. Before trial, Edwards moved to suppress the videotaped confession on the ground that the confession was involuntary. The trial court denied the suppression motion.

At trial, the jury heard Edwards's confession and other evidence against him, including the testimony of eyewitnesses. The jury convicted Edwards of five counts of armed robbery, two counts of kidnapping, and one count of rape. At the time, Louisiana law permitted guilty verdicts if at least 10 of the 12 jurors found the defendant guilty. The jury convicted Edwards by an 11-to-1 vote on one of the armed robbery counts, the two kidnapping counts, and the rape count. The jury convicted Edwards by a 10-to-2 vote on the four remaining armed robbery counts.

At sentencing, the trial judge stated: "I can say without hesitation that this is the most egregious case that I've had before me." Record 1113. The judge sentenced Edwards to life imprisonment without parole. The Louisiana First

Circuit Court of Appeal affirmed the conviction and sentence. In March 2011, Edwards's conviction became final on direct review.

After his conviction became final, Edwards applied for state post-conviction relief in the Louisiana courts. The Louisiana courts denied relief.

In 2015, Edwards filed a petition for a writ of habeas corpus in the U. S. District Court for the Middle District of Louisiana. He argued that the non-unanimous jury verdict violated his constitutional right to a unanimous jury. The District Court rejected that claim as foreclosed by this Court's 1972 decision in *Apodaca* v. *Oregon*, 406 U. S. 404.

In *Apodaca*, this Court ruled that the Constitution does not require unanimous jury verdicts in state criminal trials. The *Apodaca* majority consisted of a plurality opinion by four Justices and an opinion concurring in the judgment by Justice Powell. In his opinion, Justice Powell acknowledged that the Sixth Amendment requires a unanimous jury in *federal* criminal trials. 406 U. S., at 371. But in his view, the Fourteenth Amendment did not incorporate that right against the States, meaning that a unanimous jury was not constitutionally required in *state* criminal trials. *Id.*, at 373, 376–377. In subsequent years, many federal and state courts viewed Justice Powell's opinion as the controlling opinion from *Apodaca*. See, *e. g.*, *Timbs* v. *Indiana*, 586 U. S. 146, 150, n. 1 (2019); *McDonald* v. *Chicago*, 561 U. S. 742, 766, n. 14 (2010).

In Edwards's case, the District Court likewise followed Justice Powell's opinion from *Apodaca* and concluded that a unanimous jury is not constitutionally required in state criminal trials. The U. S. Court of Appeals for the Fifth Circuit denied a certificate of appealability. 2019 WL 8643258 (May 20, 2019). Edwards then petitioned for a writ of certiorari in this Court, arguing that the Constitution requires a unanimous jury in state criminal trials.

II

While Edwards's petition for certiorari was pending, this Court decided *Ramos* and rejected Justice Powell's opinion in *Apodaca*. See *Ramos* v. *Louisiana*, 590 U. S. 83 (2020); *Apodaca* v. *Oregon*, 406 U. S. 404 (1972). The Court held that the Fourteenth Amendment incorporates the Sixth Amendment right to a unanimous jury against the States. Therefore, in state court as well as federal court, a jury must be unanimous to convict a defendant of a serious offense.[1]

The Court's decision in *Ramos* directly affected Louisiana and Oregon, which were the only two States that still allowed non-unanimous juries. For those States, this Court's decision in *Ramos* immediately triggered a pressing question: Does *Ramos* apply retroactively to overturn final convictions on federal collateral review? We granted certiorari in Edwards's case to decide that question. 590 U. S. 929 (2020). We conclude that *Ramos* does not apply retroactively on federal collateral review.

A

A new rule of criminal procedure applies to cases on *direct* review, even if the defendant's trial has already concluded. See *Griffith* v. *Kentucky*, 479 U. S. 314, 328 (1987). But under the habeas corpus statute as interpreted by this Court, a new rule of criminal procedure ordinarily does not apply retroactively to overturn final convictions on federal *collateral* review. See *Teague* v. *Lane*, 489 U. S. 288, 310 (1989) (plurality opinion); *Penry* v. *Lynaugh*, 492 U. S. 302, 313–314 (1989).[2]

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[1] *Ramos* does not apply to defendants charged with petty offenses, which typically are offenses that carry a maximum prison term of six months or less. 590 U. S., at 88, n. 7. See also *Blanton* v. *North Las Vegas*, 489 U. S. 538, 543 (1989) (defining petty offense).

[2] Before *Griffith* v. *Kentucky*, 479 U. S. 314 (1987), the Court sometimes would decline to apply new procedural rules even to cases on *direct* review. See, *e. g.*, *Johnson* v. *New Jersey*, 384 U. S. 719, 721 (1966) (rule announced

In stating that new procedural rules ordinarily do not apply retroactively on federal collateral review, *Teague* reinforced what had already been the Court's regular practice for several decades under the retroactivity standard articulated in *Linkletter* v. *Walker*, 381 U. S. 618 (1965). *Linkletter* set forth a balancing test for determining retroactivity. But even under *Linkletter*, "new rules that constituted clear breaks with the past generally were not given retroactive effect," including on federal collateral review. *Teague*, 489 U. S., at 304 (plurality opinion).

As the Court has explained, applying "constitutional rules not in existence at the time a conviction became final seriously undermines the principle of finality which is essential to the operation of our criminal justice system." *Id.*, at 309. Here, for example, applying *Ramos* retroactively would potentially overturn decades of convictions obtained in reliance on *Apodaca*. Moreover, conducting scores of retrials years after the crimes occurred would require significant state resources. See *Teague*, 489 U. S., at 310 (plurality opinion). And a State may not be able to retry some defendants at all because of "lost evidence, faulty memory, and missing witnesses." *Allen* v. *Hardy*, 478 U. S. 255, 260 (1986) (*per curiam*) (internal quotation marks omitted). When previously convicted perpetrators of violent crimes go free merely because the evidence needed to conduct a retrial has become stale or is no longer available, the public suffers, as do the victims. See *United States* v. *Mechanik*, 475 U. S. 66, 72 (1986). Even when the evidence can be reassembled, conducting retrials years later inflicts substantial pain on crime victims who must testify again and endure new trials. In this case, the victims of the robberies, kidnappings, and

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in *Miranda* v. *Arizona*, 384 U. S. 436 (1966), applies only to cases in which the trial began after the date of the *Miranda* decision). *Griffith* ended that practice and declared that new rules apply to all cases on direct review.

rapes would have to relive their trauma and testify again, 15 years after the crimes occurred.

Put simply, the "costs imposed upon the States by retroactive application of new rules of constitutional law on habeas corpus thus generally far outweigh the benefits of this application." *Sawyer* v. *Smith*, 497 U. S. 227, 242 (1990) (internal quotation marks and alteration omitted). For that reason, the Court has repeatedly stated that new rules of criminal procedure ordinarily do not apply retroactively on federal collateral review.

The Court has identified only one possible exception to that principle. The Court has stated that a new procedural rule will apply retroactively on federal collateral review only if it constitutes a "watershed" rule of criminal procedure. *Teague*, 489 U. S., at 311 (plurality opinion). But the *Teague* Court stated that it was "unlikely" that such watershed "components of basic due process have yet to emerge." *Id.*, at 313; see also *Whorton* v. *Bockting*, 549 U. S. 406, 417 (2007); *Schriro* v. *Summerlin*, 542 U. S. 348, 352 (2004); *Tyler* v. *Cain*, 533 U. S. 656, 667, n. 7 (2001). And in the 32 years since *Teague*, as we will explain, the Court has *never* found that any new procedural rule actually satisfies that purported exception.[3]

B

To determine whether *Ramos* applies retroactively on federal collateral review, we must answer two questions.

First, did *Ramos* announce a new rule of criminal procedure, as opposed to applying a settled rule? A new rule

[3] By contrast, a new *substantive* rule—for example, a rule that particular conduct cannot constitutionally be criminalized—usually applies retroactively on federal collateral review. See *Welch* v. *United States*, 578 U. S. 120, 128–129 (2016). The parties here agree, as do we, that the rule announced in *Ramos* is procedural. The *Ramos* rule affects "only the manner of determining the defendant's culpability," not the "range of conduct or the class of persons that the law punishes." *Schriro* v. *Summerlin*, 542 U. S. 348, 353 (2004) (emphasis deleted).

ordinarily does not apply retroactively on federal collateral review.

Second, if *Ramos* announced a new rule, does it fall within an exception for watershed rules of criminal procedure that apply retroactively on federal collateral review?

1

Ramos held that a state jury must be unanimous to convict a defendant of a serious offense. In so holding, *Ramos* announced a new rule.

A rule is new unless it was "*dictated* by precedent existing at the time the defendant's conviction became final." *Teague*, 489 U. S., at 301 (plurality opinion). In other words, a rule is new unless, at the time the conviction became final, the rule was already "apparent to all reasonable jurists." *Lambrix* v. *Singletary,* 520 U. S. 518, 528 (1997). The starkest example of a decision announcing a new rule is a decision that overrules an earlier case. See *Whorton*, 549 U. S., at 416.

The jury-unanimity requirement announced in *Ramos* was not dictated by precedent or apparent to all reasonable jurists when Edwards's conviction became final in 2011. On the contrary, before *Ramos*, many courts interpreted *Apodaca* to allow for non-unanimous jury verdicts in state criminal trials.[4] In addition, in *Ramos* itself, six Members of the

[4] See, *e. g.*, *Timbs* v. *Indiana*, 586 U. S. 146, 150, n. 1 (2019) (the "Sixth Amendment requires jury unanimity in federal, but not state, criminal proceedings"); *McDonald* v. *Chicago*, 561 U. S. 742, 766, n. 14 (2010) ("The Court has held that although the Sixth Amendment right to trial by jury requires a unanimous jury verdict in federal criminal trials, it does not require a unanimous jury verdict in state criminal trials"); *Schad* v. *Arizona*, 501 U. S. 624, 634, n. 5 (1991) (plurality opinion) (a "state criminal defendant, at least in noncapital cases, has no federal right to a unanimous jury verdict"); *Burch* v. *Louisiana*, 441 U. S. 130, 137 (1979) (the Court has "approved the use of certain nonunanimous verdicts in cases involving 12-person juries"); *Ludwig* v. *Massachusetts*, 427 U. S. 618, 625 (1976) (the "holding in *Apodaca*" was that "the jury's verdict need not be unani-

Court acknowledged that *Apodaca* allowed non-unanimous jury verdicts in state criminal trials. See 590 U. S., at 112–113 (SOTOMAYOR, J., concurring in part); *id.*, at 115 (KAVANAUGH, J., concurring in part); *id.*, at 138–139 (THOMAS, J., concurring in judgment); *id.*, at 140 (ALITO, J., joined by ROBERTS, C. J., and KAGAN, J., dissenting). And other Members of the Court recognized that *Apodaca* at least muddied the waters of the Court's Sixth Amendment jurisprudence. *Id.*, at 95–96, and n. 36 (plurality opinion). In short, even in *Ramos* itself, the Court indicated that the decision was not dictated by precedent or apparent to all reasonable jurists.

Edwards responds that the Court's decision in *Ramos* must have applied a settled rule, not a new rule, because the decision adhered to the original meaning of the Sixth Amendment's right to a jury trial and the Fourteenth Amendment's incorporation of that right (and others) against the States. That argument conflates the merits question presented in *Ramos* with the retroactivity question presented here. On the merits question, the critical point, as the Court thoroughly explained in *Ramos*, is that the Constitution's text and history require a unanimous jury in state criminal trials. On the retroactivity question, the critical point is that reasonable jurists who considered the question before *Ramos* interpreted *Apodaca* to allow non-unanimous jury verdicts in state criminal trials.

By renouncing *Apodaca* and expressly requiring unanimous jury verdicts in state criminal trials, *Ramos* plainly announced a new rule for purposes of this Court's retroactivity doctrine. And new rules of criminal procedure ordinarily do not apply retroactively on federal collateral review.

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mous"); *Smith* v. *Swarthout*, 742 F. 3d 885, 895, n. 4 (CA9 2014) ("The Supreme Court has instructed that the Sixth and Fourteenth Amendments do not require a unanimous verdict in state criminal prosecutions"); see also 6 W. LaFave, J. Israel, N. King, & O. Kerr, Criminal Procedure § 22.1(e), p. 23 (4th ed. 2015) (the "Sixth Amendment does not require jury unanimity in state criminal trials").

2

Having determined that *Ramos* announced a new rule requiring jury unanimity, we must consider whether that new rule falls within an exception for watershed rules of criminal procedure that apply retroactively on federal collateral review.

This Court has stated that the watershed exception is "extremely narrow" and applies only when, among other things, the new rule alters "our understanding of the bedrock procedural elements essential to the fairness of a proceeding." *Whorton*, 549 U. S., at 417–418 (internal quotation marks omitted).

In the abstract, those various adjectives—watershed, narrow, bedrock, essential—do not tell us much about whether a particular decision of this Court qualifies for the watershed exception. In practice, the exception has been theoretical, not real. The Court has identified only one pre-*Teague* procedural rule as watershed: the right to counsel recognized in the Court's landmark decision in *Gideon* v. *Wainwright*, 372 U. S. 335, 344–345 (1963). See *Whorton*, 549 U. S., at 419, 421. The Court has never identified any other pre-*Teague* or post-*Teague* rule as watershed. None.

Moreover, the Court has flatly proclaimed on multiple occasions that the watershed exception is unlikely to cover any more new rules. Even 32 years ago in *Teague* itself, the Court stated that it was "unlikely" that additional watershed rules would "emerge." 489 U. S., at 313 (plurality opinion). And since *Teague*, the Court has often reiterated that "it is unlikely that any such rules have yet to emerge." *Whorton*, 549 U. S., at 417 (internal quotation marks and alteration omitted); see also *Beard* v. *Banks*, 542 U. S. 406, 417 (2004); *Summerlin*, 542 U. S., at 352; *Tyler*, 533 U. S., at 667, n. 7; *Graham* v. *Collins*, 506 U. S. 461, 478 (1993); *Sawyer*, 497 U. S., at 243; *Butler* v. *McKellar*, 494 U. S. 407, 416 (1990).

Consistent with those many emphatic pronouncements, the Court since *Teague* has rejected *every* claim that a new procedural rule qualifies as a watershed rule. For example, in *Beard* v. *Banks*, 542 U. S., at 408, the Court declined to retroactively apply the rule announced in *Mills* v. *Maryland*, 486 U. S. 367, 384 (1988), that capital juries may not be required to disregard certain mitigating factors. In *O'Dell* v. *Netherland*, 521 U. S. 151, 153 (1997), the Court refused to retroactively apply the rule announced in *Simmons* v. *South Carolina*, 512 U. S. 154, 156 (1994), that a capital defendant must be able, in certain circumstances, to inform the sentencing jury that he is parole ineligible. In *Lambrix* v. *Singletary*, 520 U. S., at 539–540, the Court declined to retroactively apply the rule announced in *Espinosa* v. *Florida*, 505 U. S. 1079, 1082 (1992) (*per curiam*), that sentencers may not weigh invalid aggravating circumstances before recommending or imposing the death penalty. In *Sawyer* v. *Smith*, 497 U. S., at 229, the Court refused to retroactively apply the rule announced in *Caldwell* v. *Mississippi*, 472 U. S. 320, 323 (1985), which prohibited a death sentence by a jury led to the false belief that responsibility for the sentence rested elsewhere.

The list of cases declining to retroactively apply a new rule of criminal procedure extends back long before *Teague* to some of this Court's most historic criminal procedure decisions. For example, in *Johnson* v. *New Jersey*, 384 U. S. 719, 721 (1966), the Court declined to retroactively apply *Miranda* v. *Arizona*, 384 U. S. 436, 444–445 (1966), which required that police inform individuals in custody of certain constitutional rights before questioning them. And in *Linkletter* v. *Walker*, 381 U. S., at 639–640, the Court refused to retroactively apply *Mapp* v. *Ohio*, 367 U. S. 643, 655 (1961), which incorporated the Fourth Amendment exclusionary rule against the States.

Edwards seeks to distinguish *Ramos* from the long line of cases where the Court has declined to retroactively apply new procedural rules. Edwards emphasizes three aspects of *Ramos*: (i) the significance of the jury-unanimity right; (ii) *Ramos*'s reliance on the original meaning of the Constitution;

and (iii) the effect of *Ramos* in preventing racial discrimination in the jury process.

But Edwards's attempts to distinguish *Ramos* are unavailing because the Court has already considered and rejected those kinds of arguments in prior retroactivity cases.

First, Edwards emphasizes the significance of the jury-unanimity right for criminal defendants. But that argument for retroactivity cannot be squared with the Court's decisions in *Duncan* v. *Louisiana*, 391 U. S. 145 (1968), and *DeStefano* v. *Woods*, 392 U. S. 631 (1968) (*per curiam*). In *Duncan*, the Court repudiated several precedents and ruled that a defendant has a constitutional right to a jury trial in a state criminal case. 391 U. S., at 149–150, 154–155. Notwithstanding the extraordinary significance of *Duncan* in guaranteeing a jury trial and expanding the rights of criminal defendants, the Court in *DeStefano* declined to retroactively apply the jury right. 392 U. S., at 633; see also *Summerlin*, 542 U. S., at 356–358 (relying on *DeStefano* and rejecting retroactivity of jury right recognized in *Ring* v. *Arizona*, 536 U. S. 584, 589 (2002)). We cannot discern a principled basis for retroactively applying the subsidiary *Ramos* jury-unanimity right when the Court in *DeStefano* declined to retroactively apply the broader jury right itself.[5]

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[5] Edwards argues that the *Ramos* rule mirrors the rule announced in *Burch* v. *Louisiana*, 441 U. S. 130, 134 (1979). In *Burch*, the Court held that six-person jury verdicts must be unanimous. According to Edwards, the Court retroactively applied *Burch* in *Brown* v. *Louisiana*, 447 U. S. 323 (1980). But the Justices who concurred in the judgment and supplied the decisive opinion in *Brown* said only that the *Burch* rule should apply to all cases on *direct* review. 447 U. S., at 337 (opinion of Powell, J., joined by Stevens, J.). They did not say that the rule should apply retroactively on federal *collateral* review. So *Brown* does not help Edwards here.

The Court's decision in *Ivan V.* v. *City of New York*, 407 U. S. 203 (1972) (*per curiam*), is no more helpful to Edwards. In *In re Winship*, the Court held that a jury must find guilt "beyond a reasonable doubt." 397 U. S. 358, 364 (1970). And in *Ivan V.*, the Court held that the rule announced in *Winship* applied in a case on *direct* review. 407 U. S., at 205. But in its numerous retroactivity cases, this Court has never identified the *Winship* rule as a watershed rule of criminal procedure that applies retro-

Second, Edwards stresses that *Ramos* relied on the original meaning of the Sixth Amendment. But that argument for retroactivity is inconsistent with *Crawford* v. *Washington*, 541 U. S. 36 (2004), and *Whorton* v. *Bockting*, 549 U. S. 406 (2007). In *Crawford*, the Court relied on the original meaning of the Sixth Amendment's Confrontation Clause to overrule precedent and restrict the use of hearsay evidence against criminal defendants. 541 U. S., at 60–69. Notwithstanding *Crawford*'s reliance on the original meaning of the Sixth Amendment, the Court in *Whorton* declined to retroactively apply *Crawford*. 549 U. S., at 421.

Third, Edwards says that *Ramos* prevents racial discrimination by ensuring that the votes of all jurors, regardless of race, matter in the jury room. But that argument for retroactivity cannot prevail in light of *Batson* v. *Kentucky*, 476 U. S. 79 (1986), and *Allen* v. *Hardy*, 478 U. S. 255 (1986) (*per curiam*). In *Batson*, the Court overruled precedent and revolutionized day-to-day jury selection by holding that state prosecutors may not discriminate on the basis of race when exercising individual peremptory challenges. 476 U. S., at 92–93, 96–98. Nonetheless, the Court in *Allen* declined to retroactively apply *Batson*. 478 U. S., at 261; see also *Teague*, 489 U. S., at 295–296 (reaffirming *Allen*).

The Court's decisions in *Duncan*, *Crawford*, and *Batson* were momentous and consequential. All three decisions fundamentally reshaped criminal procedure throughout the

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actively on federal collateral review. That no doubt explains why, in his submissions to this Court, Edwards himself did not cite *Ivan V.* in support of his retroactivity argument.

In any event, *Brown* and *Ivan V.* were pre-*Teague* decisions. See *Teague* v. *Lane*, 489 U. S. 288 (1989). Because *Teague* tightened the previous standard set forth in *Linkletter* v. *Walker*, 381 U. S. 618 (1965), for applying a decision retroactively on federal collateral review, pre-*Teague* decisions holding that a rule *is* retroactive are not as relevant as pre-*Teague* decisions holding that a rule *is not* retroactive, such as *DeStefano*.

United States and significantly expanded the constitutional rights of criminal defendants. One involved the jury-trial right, one involved the original meaning of the Sixth Amendment's Confrontation Clause, and one involved racial discrimination in jury selection. Yet the Court did not apply any of those decisions retroactively on federal collateral review. *Ramos* is likewise momentous and consequential. But we see no good rationale for treating *Ramos* differently from *Duncan*, *Crawford*, and *Batson*. Consistent with the Court's long line of retroactivity precedents, we hold that the *Ramos* jury-unanimity rule does not apply retroactively on federal collateral review.[6]

In so concluding, we recognize that the Court's many retroactivity precedents taken together raise a legitimate question: If landmark and historic criminal procedure decisions—including *Mapp*, *Miranda*, *Duncan*, *Crawford*, *Batson*, and now *Ramos*—do not apply retroactively on federal collateral review, how can any additional new rules of criminal procedure apply retroactively on federal collateral review? At this point, some 32 years after *Teague*, we think the only candid answer is that none can—that is, no new rules of criminal procedure can satisfy the watershed exception. We cannot responsibly continue to suggest otherwise to litigants and courts. In *Teague* itself, the Court recognized that the purported exception was unlikely to apply in practice, because it was "unlikely" that such watershed "components of basic due process have yet to emerge." 489 U. S., at 313 (plurality opinion). The Court has often repeated that "it is unlikely that any of these watershed rules has yet to emerge." *Tyler*, 533 U. S., at 667, n. 7 (alteration and internal quotation marks omitted); see also, *e. g.*, *Whorton*, 549

[6] The *Ramos* rule does not apply retroactively on *federal* collateral review. States remain free, if they choose, to retroactively apply the jury-unanimity rule as a matter of state law in state post-conviction proceedings. See *Danforth* v. *Minnesota*, 552 U. S. 264, 282 (2008).

U. S., at 417; *Summerlin*, 542 U. S., at 352. And for decades, the Court has rejected watershed status for new procedural rule after new procedural rule, amply demonstrating that the purported exception has become an empty promise.

Continuing to articulate a theoretical exception that never actually applies in practice offers false hope to defendants, distorts the law, misleads judges, and wastes the resources of defense counsel, prosecutors, and courts. Moreover, no one can reasonably rely on an exception that is non-existent in practice, so no reliance interests can be affected by forthrightly acknowledging reality. It is time—probably long past time—to make explicit what has become increasingly apparent to bench and bar over the last 32 years: New procedural rules do not apply retroactively on federal collateral review. The watershed exception is moribund. It must "be regarded as retaining no vitality." *Herrera* v. *Wyoming*, 587 U. S. 329, 342 (2019) (internal quotation marks omitted).

3

We respectfully offer four responses to the dissent.

First, in the dissent's view, if a right is important enough to justify overruling or repudiating precedent (as in *Ramos*), then it often is important enough to apply retroactively as a watershed rule of criminal procedure. But the Court's precedents say the opposite and demonstrate that the dissent's position erroneously inverts *stare decisis* and *Teague*. *Teague* recognized that the Court would occasionally announce new rules of criminal procedure by overruling or repudiating existing precedents. *Teague* further explained, however, that it was "unlikely" that such new procedural rules would apply retroactively on federal collateral review. 489 U. S., at 313 (plurality opinion). In other words, under this Court's longstanding case law, it is easier to overrule or repudiate a precedent—as the Court did in *Mapp*, *Miranda*, *Duncan*, *Batson*, and *Crawford*, for example—than it is to apply the new procedural rule retroactively on federal collateral review—as demonstrated by the Court's corresponding non-retroactivity decisions in *Linkletter*, *Johnson*, *DeStefano*, *Allen*, and *Whorton*.

The *Ramos* Court fully understood all of this. Although *Ramos* stopped short of expressly deciding this retroactivity question (because it was not squarely presented), *Ramos* discussed retroactivity and plainly foreshadowed today's decision. The lead opinion in *Ramos*—which was joined in relevant part by two of today's dissenters, JUSTICE BREYER and JUSTICE SOTOMAYOR—explained that overruling or repudiating *Apodaca* was not likely to significantly affect Louisiana's and Oregon's reliance interests in preserving final convictions because *Ramos* was not likely to apply retroactively on federal collateral review. In particular, the lead opinion said that the States' "worries" about *Ramos* applying retroactively and overturning hundreds of final convictions outstripped "the facts" because "*Teague*'s test is a demanding one, so much so that this Court has yet to announce a new rule of criminal procedure capable of meeting it." *Ramos*, 590 U. S., at 109 (opinion of GORSUCH, J.); see also *id.*, at 130–131 (KAVANAUGH, J., concurring in part). The lead opinion added that *Teague* is "demanding by design, expressly calibrated to address the reliance interests States have in the finality of their criminal judgments." *Id.*, at 109 (opinion of GORSUCH, J.). In light of that explicit language in *Ramos*, the Court's decision today can hardly come as a surprise.

In short, the Court's holding today—namely, that *Ramos* does not apply retroactively on federal collateral review—carefully adheres to *Ramos* and tracks the Court's many longstanding precedents on retroactivity.

Second, the dissent suggests that the Court knows that *Ramos* should apply retroactively under the watershed exception, but wants to avoid applying *Ramos* retroactively, and for that reason has decided to just eliminate the watershed exception altogether. That suggestion is unfounded. *Ramos* was a momentous decision, and those of us who joined it continue to agree with it. But as we have explained, *Ramos* itself analyzed the Court's retroactivity precedents and foretold today's decision on retroactivity. We are simply following through on what *Ramos* (as well as the Court's many other precedents) already said about retroactivity to now squarely hold that *Ramos* does not apply retroactively on federal collateral review. If we thought otherwise and believed that *Ramos* qualified under the Court's precedents as a rule that applies retroactively, we would certainly say so. But applying our retroactivity precedents, we have concluded that *Ramos* does not apply retroactively—just as the Court has previously held that other historic cases like *Mapp*, *Miranda*, *Duncan*, *Batson*, and *Crawford* did not apply retroactively. After reaching that conclusion, we then took account of the overall jurisprudential landscape of the last several decades in *Teague* cases and acknowledged what has become unmistakably clear: The purported watershed exception is moribund.

Third, on that last point, the dissent responds that *Teague* nominally identified a retroactivity exception for watershed procedural rules and that we should do so as well. But the problem, as we see it, is that *Teague* simultaneously said that it was "unlikely" that new procedural rules would qualify as watershed. 489 U. S., at 313 (plurality opinion). So *Teague* took with one hand what it seemingly gave with the other. And in the 32 years since *Teague*, this Court has never once held that a new procedural rule qualifies for the purported watershed exception. What is more, the Court has regularly repeated that *Teague*'s watershed exception would likely never be satisfied. The Court today need not and does not overrule any post-*Teague* cases that held the watershed exception satisfied because there are no post-*Teague* cases that held the watershed exception satisfied.

As noted above, no *stare decisis* values would be served by continuing to indulge the fiction that *Teague*'s purported watershed exception endures. No one can reasonably rely on a supposed exception that has never operated in practice.

And perpetuating what has become an illusory exception misleads litigants and judges, and needlessly expends the scarce resources of defense counsel, prosecutors, and courts. At this point, given that landmark cases like *Mapp*, *Miranda*, *Duncan*, *Batson*, *Crawford*, and now *Ramos* have not applied retroactively, we are simply acknowledging reality and stating the obvious: The purported watershed exception retains no vitality.

Fourth, the dissent asserts that the Court is not living up to the promise of *Ramos* for criminal defendants. To begin with, the dissent cannot reasonably charge the Court with failing to live up to *Ramos* given that *Ramos* itself explicitly forecast today's decision on retroactivity. Moreover, with respect, JUSTICE KAGAN dissented in *Ramos*. To be sure, the dissent's position on the jury-unanimity rule in *Ramos* was perfectly legitimate, as is the dissent's position on retroactivity in today's case. And it is of course fair for a dissent to vigorously critique the Court's analysis. But it is another thing altogether to dissent in *Ramos* and then to turn around and impugn today's majority for supposedly shortchanging criminal defendants. To properly assess the implications for criminal defendants, one should assess the implications of *Ramos* and today's ruling *together*. And criminal defendants as a group are better off under *Ramos* and today's decision, taken together, than they would have been if JUSTICE KAGAN's dissenting view had prevailed in *Ramos*. If the dissent's view had prevailed in *Ramos*, no defendant would ever be entitled to the jury-unanimity right—not on collateral review, not on direct review, and not in the future. By contrast, under the Court's holdings in *Ramos* and this case, criminal defendants whose cases are still on direct review or whose cases arise in the future will have the benefit of the jury-unanimity right announced in *Ramos*. The rhetoric in today's dissent is misdirected. Different Members of the Court have reached different conclusions in *Ramos* and in this case, but each Member of the Court has acted in good faith in deciding the difficult questions before us.

* * *

To summarize the Court's retroactivity principles: New substantive rules alter "the range of conduct or the class of persons that the law punishes." *Summerlin*, 542 U. S., at 353. Those new substantive rules apply to cases pending in trial courts and on direct review, and they also apply retroactively on federal collateral review. New procedural rules alter "only the manner of determining the defendant's culpability." *Ibid.* (emphasis deleted). Those new procedural rules apply to cases pending in trial courts and on direct review. But new procedural rules do not apply retroactively on federal collateral review.

Ramos announced a new rule of criminal procedure. It does not apply retroactively on federal collateral review. We affirm the judgment of the U. S. Court of Appeals for the Fifth Circuit.

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE GORSUCH joins, concurring.

I join the majority in full because it correctly charts its way through precedent to hold expressly what we have long implied: "New procedural rules do not apply retroactively on federal collateral review." *Ante*, at 272. I write separately to highlight that we could also have resolved this case by applying the statutory text of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). AEDPA directs federal courts to deny "any claim that was adjudicated on the merits in State court" unless 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). In 2011, petitioner urged a Louisiana court to hold that the Federal Constitution requires jury unanimity, and the court rejected that claim on the merits. That conclusion was consistent with *Apodaca* v. *Oregon*, 406 U. S. 404 (1972), in which this Court determined that the Constitution does not require unanimous jury verdicts for state criminal convictions. AEDPA thus leaves no room for this Court—or any federal court—to grant relief.

I

A

Congress first prescribed federal habeas jurisdiction in the Judiciary Act of 1789. That statute did not clearly define the scope of relief, but "the black-letter principle of the common law [was] that the writ was simply not available at all to one convicted of crime by a court of competent jurisdiction."[1] Bator, Finality in Criminal Law and Federal Habeas Corpus for State Prisoners, 76 Harv. L. Rev. 441, 465–466 (1963) (Bator); see *Felker* v. *Turpin*, 518 U. S. 651, 663 (1996) (citing *Ex parte Watkins*, 3 Pet. 193 (1830)). And the writ did not extend at all to prisoners confined under state authority. Bator 465.

Congress expanded the writ in the Habeas Corpus Act of 1867. Ch. 28, 14 Stat. 385. This Act extended the writ to prisoners in state custody but again provided only "bare guidelines" about the scope of the writ.[2] *Wright* v. *West*, 505 U. S. 277, 285 (1992) (plurality opinion). At first, this Court continued to apply the common-law rule that allowed

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[1] Section 14 of the Judiciary Act provided that "courts of the United States . . . shall have power to issue writs of . . . *habeas corpus*" and that "justices of the supreme court, as well as judges of the district courts, shall have power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment.—*Provided*, That writs of *habeas corpus* shall in no case extend to prisoners in gaol, unless where they are in custody, under or by colour of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify." 1 Stat. 81–82.

[2] The relevant language of the Act stated that courts, "in addition to the authority already conferred by [the Judiciary Act of 1789], shall have power to grant writs of habeas corpus in all cases where any person may be restrained of his or her liberty in violation of the constitution, or of any treaty or law of the United States." 14 Stat. 385.

a state petitioner to challenge only "the jurisdiction of the court that had rendered the judgment under which he was in custody." *Ibid.* But the Court later "expand[ed] the category of claims deemed to be jurisdictional for habeas purposes." *Ibid.* In 1874, for example, this Court found jurisdictional defects whenever state courts imposed sentences under unconstitutional statutes or imposed sentences not authorized by a statute. *Ibid.* (collecting cases). And a few decades later, the Court expanded relief to situations where, in the eyes of the federal court, "no state court had provided a full and fair opportunity to litigate" a prisoner's federal claims. *Ibid.* But absent a "jurisdictional" defect, a state court judgment was entitled to " '*absolute* respect' " as long as the prisoner " 'had been given an adequate opportunity to obtain full and fair consideration of his federal claim in the state courts.' " *Ibid.* That rule left no room to grant relief simply because a state court made an error of law.

In 1953, this Court abruptly changed course and decided that federal courts could grant a writ of habeas corpus simply because they disagreed with a state court's judgment. See *Brown* v. *Allen*, 344 U. S. 443, 463. Around the same time, this Court declared that many constitutional rights of criminal procedure—some old, and some new—applied against the States. See, *e. g.*, *Mapp* v. *Ohio*, 367 U. S. 643 (1961) (exclusionary rule); *Gideon* v. *Wainwright*, 372 U. S. 335 (1963) (right to a court-appointed attorney); *Miranda* v. *Arizona*, 384 U. S. 436 (1966) (right to be informed of right against self-incrimination). That combination predictably raised tough questions: Should new rules apply retroactively to final state-court judgments, allowing federal courts to grant habeas relief even if state courts did not err when issuing their decisions? And if so, by what authority could federal courts grant that relief?

Admitting that "the Constitution neither prohibits nor requires retrospective effect," *Linkletter* v. *Walker*, 381 U. S.

618, 629 (1965), the Court took an atextual and ad hoc approach, presumably based on its interpretation of the 1867 Act. The Court declared that some federal decisions apply retroactively to final state convictions, thus allowing federal courts to grant habeas relief depending on the "merits and demerits in each case." *Ibid.* To guide the analysis, *Linkletter* announced several factors for federal courts to consider: "the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation." *Ibid.*

This rule did "not le[ad] to consistent results," so two decades later the Court tried a new interpretation of the 1867 Act. See *Teague* v. *Lane*, 489 U. S. 288, 302 (1989) (plurality opinion); *Danforth* v. *Minnesota*, 552 U. S. 264, 278 (2008) ("*Teague*'s general rule of nonretroactivity was an exercise of this Court's power to interpret the federal habeas statute"). Relevant here, *Teague* allowed federal courts to give new constitutional rules of criminal procedure retroactive effect on habeas review only if the new rule was "watershed," " 'bedrock,' " or " 'essential.' " 489 U. S., at 311 (emphasis deleted).[3]

B

Teague, however, was not the final word on how federal courts should review the decisions of state courts. In 1996, Congress enacted AEDPA, the most significant change to

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[3] Two years before *Teague*, this Court overruled cases that had allowed courts to apply the balancing test in *Linkletter* v. *Walker*, 381 U. S. 618 (1965), to cases on direct review, holding instead that the Constitution required courts to apply new procedural rules retroactively to cases on direct appellate review. *Griffith* v. *Kentucky*, 479 U. S. 314, 328 (1987). *Teague* also explained that new rules that "accord constitutional protection to . . . primary activity" retroactively apply to cases on federal collateral review. 489 U. S., at 307, 310–311. These are considered substantive rules. See *Welch* v. *United States*, 578 U. S. 120, 128 (2016).

the habeas corpus statute since 1867. AEDPA filled in the "bare guidelines" of the 1867 Act by creating a comprehensive system for addressing federal habeas claims brought by state prisoners. See *Wright*, 505 U. S., at 285.

Directly relevant here are two provisions that ensure that state courts have the primary role in adjudicating these claims. First, a prisoner must exhaust his claims in state court before he can seek relief in federal court. If "any available [state-law] procedure" remains open, a federal "writ of habeas corpus . . . shall not be granted." §§ 2254(b)–(c). Second, once a state court has had the opportunity to decide that claim, AEDPA demands that federal courts respect that judgment. The law precludes relief "with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim" either (1) "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or (2) "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." § 2254(d). It is not enough for a federal court to disagree with the state court—much less disagree on a point of law that this Court had not yet settled when the state court issued its judgment. Rather, the state court's decision must conflict with clearly established law and be obviously wrong "beyond any possibility for fairminded disagreement." *Harrington* v. *Richter*, 562 U. S. 86, 103 (2011); *Greene* v. *Fisher*, 565 U. S. 34, 38–40 (2011).

II

A

Here, the system worked as designed. Edwards presented his unanimous jury claim to a Louisiana court. And the state court reasonably relied on *Apodaca* in rejecting that claim. AEDPA is clear about what happens next—relief "shall not be granted." § 2254(d).

Our analysis could have begun and ended there—with §2254(d)(1)'s plain text. Congress, through AEDPA, has made clear that federal courts cannot provide relief in this case. See *Montgomery* v. *Louisiana*, 577 U. S. 190, 221 (2016) (Scalia, J., dissenting); see also *Ex parte Bollman*, 4 Cranch 75, 94 (1807) (Marshall, C. J.) ("[T]he power to award the writ by any of the courts of the United States, must be given by written law").

B

The Court, instead, relies on *Teague*. I join the Court's opinion because it correctly applies precedent and leads to the same judgment, but I would be remiss if I did not point out two other problems with *Teague*.

First, it has *never* been clear what gave this Court authority to grant habeas relief to state prisoners based on "new" constitutional rules of criminal procedure. *Teague* did not explain why the 1867 Act gave federal courts this power. Moreover, *Teague* primarily focused on moving the law in the opposite direction of *Linkletter*'s permissive approach to collaterally reviewing final state convictions. See *Danforth*, 552 U. S., at 278 ("*Teague* . . . situated the rule it announced in th[e] line of cases adjusting the scope of federal habeas relief in accordance with equitable and prudential considerations"). Even if federal courts had this power, we never decided whether Congress' most recent version of the habeas statute—AEDPA—continued to allow such relief. Given all that, the majority wisely closes a door to retroactive relief that likely never existed in the first place.

Second, the Court's reliance on *Teague* today and in the past should not be construed to signal that AEDPA is an afterthought in analyzing a claim like petitioner's or that *Teague* could justify relief where AEDPA forecloses it. AEDPA does contemplate that some new constitutional rules might be retroactive in narrow circumstances. See §§2254(e)(2)(A)(i) (evidentiary hearings), 2244(b)(2)(A) (second-or-successive bar), 2244(d)(1)(C) (statute of limitations). But it does not contemplate retroactive rules upsetting a state court's adjudication of an issue that reasonably applied the law at the time. Section 2254(d)—the absolute bar on claims that state courts reasonably denied—has no exception for retroactive rights. Congress' decision to create retroactivity exceptions to the statute of limitations and to the bar on second-or-successive petitions but not for § 2254(d) is strong evidence that *Teague* could never have led to relief here. *Russello* v. *United States*, 464 U. S. 16, 23 (1983).[4] The plain text applies regardless of what a previous interpretation of a previous statute says.[5]

* * *

A state court rejected petitioner's claim that he was entitled to a unanimous jury verdict. That adjudication was not unreasonable or contrary to clearly established federal law. AEDPA's explicit directive thus independently resolves this case: "a writ of habeas corpus . . . shall not be granted." § 2254(d).

JUSTICE GORSUCH, with whom JUSTICE THOMAS joins, concurring.

Sometimes this Court leaves a door ajar and holds out the possibility that someone, someday might walk through it—

[4] As JUSTICE GORSUCH correctly points out, federal courts have "equitable discretion to decide whether to issue the writ or to provide a remedy," which includes the powers to create doctrines such as harmless error. *Post*, at 289 (concurring opinion). And federal courts can rely on those doctrines as well as statutory bars to deny relief. That is why, as JUSTICE GORSUCH explains, an equitable retroactivity bar with no watershed exception can independently justify denying relief. *Post*, at 291, n. 5.

[5] The Constitution does not require that habeas relief be available for new "watershed" rules of criminal procedure. See, *e. g.*, *Brown* v. *Allen*, 344 U. S. 443, 532–533 (1953) (Jackson, J., concurring in result); *Linkletter*, 381 U. S., at 629. *Teague* also acknowledged that a later change in law does not require invalidating a final judgment. See 489 U. S., at 308–309 (plurality opinion). And again, habeas corpus traditionally did not apply at all to prisoners sentenced by a court with valid jurisdiction. See Bator 465–466.

though no one ever has or, in truth, ever will. In *Teague* v. *Lane*, 489 U. S. 288 (1989), the Court suggested that one day it might apply a new "watershed" rule of criminal procedure retroactively to undo a final state court conviction. But that day never came to pass. Instead, over the following three decades this Court denied "watershed" status to one rule after another. Rules guaranteeing individuals the right to confront their accusers. Rules ensuring that only a jury may decide a defendant's fate in a death penalty case. Rules preventing racially motivated jury selection. All failed to win retroactive application. Today, the Court candidly admits what has been long apparent: *Teague* held out a "false hope" and the time has come to close its door. *Ante*, at 272. We take this step not because this Court's criminal procedure rulings are somehow unimportant. Any decision seeking to enforce liberties enshrined in the Constitution has a claim to "watershed" importance. Instead, we abandon *Teague*'s test because it poses a question this Court has no business asking.

I

Though we often refer to *the* writ of habeas corpus, the common law knew several. See *Ex parte Bollman*, 4 Cranch 75, 97–98 (1807). All had one thing in common: Each required a custodian to produce (*habeas*) a prisoner's person (*corpus*). But they served different ends. Some writs were tools for moving a prisoner from one court to another—whether for a new prosecution (*ad respondendum*) or to execute a prior judgment (*ad satisfaciendum*). Others functioned more like a subpoena to procure a prisoner's presence to testify in court (*ad testificandum*). Others still served to remove a case from an inferior court to a superior one (*cum causa*). 3 W. Blackstone, Commentaries on the Laws of England 129–131 (1768).

Among them all, however, only one came to be known as "The Great Writ." The writ of *habeas corpus ad subjiciendum* was a mechanism for asking "*why* the liberty of [a] subjec[t] is restrained." *Id.*, at 131 (emphasis added). Leading up to the English Civil War, monarchs sometimes jailed their subjects summarily and indefinitely, with little explanation and even less process. *E. g., Darnel's Case*, 3 How. St. Tr. 1–59 (K. B. 1627). In response, common law courts developed the *ad subjiciendum* writ to force the Crown to provide reasons for its actions and, if necessary, to ensure adequate process—like a criminal trial—to justify any further detention. See Petition of Right, 3 Car. 1, ch. 1, ¶¶ 5, 8 (1628). In other words, "habeas corpus [w]as the instrument by which due process could be insisted upon." *Hamdi* v. *Rumsfeld*, 542 U. S. 507, 555 (2004) (Scalia, J., dissenting).

Great though it was, the writ's power was never limitless. A prisoner confined under a final judgment of conviction by a court of competent jurisdiction stood on different footing than one confined by the King without trial. A court might issue the writ asking, "What is the reason for confinement?" But if the return came back: "Because he's serving a custodial sentence after being convicted of a crime," the inquiry was usually at an end. See *Opinion on the Writ of Habeas Corpus*, Wilm. 77, 88, 97 Eng. Rep. 29, 36 (K. B. 1758); cf. *Anonymus*, Cart. 221, 124 Eng. Rep. 928 (C. P. 1671); Habeas Corpus Act of 1679, 31 Car. 2, ch. 2, ¶¶ 2, 20. Custody pursuant to a final judgment was *proof* that a defendant had received the process due to him. See, *e. g., Bushell's Case*, Vaugh. 135, 142–143, 124 Eng. Rep. 1006, 1009–1010 (C. P. 1670).

In 1789, Congress authorized federal courts to issue the habeas writ. 1 Cong. ch. 20, § 14, 1 Stat. 73, 81–82; *Ex parte Bollman*, 4 Cranch, at 93–94. When called upon to interpret that statute, this Court defined the scope of habeas review by looking "to the common law." *Id.*, at 93–94. Unsurprisingly, it proceeded to restate the longstanding rule associated with criminal judgments: *Ad subjiciendum* provided no recourse for a prisoner confined pursuant to a final judgment of conviction. *Ex parte Watkins*, 3 Pet. 193, 209 (1830). As Chief Justice Marshall rhetorically asked, "is not that judgment in *itself* sufficient cause?" *Id.*, at 202 (emphasis added).

If the answer was nearly always yes, one important exception existed both here and in England. A habeas court could grant relief if the court of conviction lacked jurisdiction over the defendant or his offense. *Id.*, at 202–203. Still, the exception was "confined" to that "limited class of cases." *Ex parte Parks*, 93 U. S. 18, 21 (1876). One judge could not grant relief just because he might have decided the merits of the case differently than another had. As this Court put it, a perceived "error in the judgment or proceedings, under and by virtue of which the party is imprisoned, constitute[d] no ground for" relief. *Ex parte Siebold*, 100 U. S. 371, 375 (1880). Any other approach, the Court explained, risked converting the habeas writ into "a mere writ of error," little more than a chance to redo a trial or its appeal. *Ibid.*

Originally, Congress allowed federal courts to issue habeas writs only to federal custodians. Reconstruction changed that. After the Civil War, Congress granted federal courts the power to issue habeas writs to state authorities as well. See Act of Feb. 5, 1867, 39 Cong. ch. 28, § 1, 14 Stat. 385.[1] Even then, however, this Court continued to interpret the habeas statute consistent with historical practice. If a prisoner was in custody pursuant to a final state court judgment,

[1] That Act conferred on federal courts the "power to grant writs of habeas corpus in *all* cases where any person may be restrained of his or her liberty in violation of" federal law. § 1, 14 Stat. 385 (emphasis added). Two earlier statutes extended federal habeas jurisdiction to state custodians, but only for a much narrower class of cases. In 1833, Congress authorized federal courts to issue habeas process to state custodians detaining federal officers for acts taken to implement federal law. Act of Mar. 2, 1833, § 7, 4 Stat. 634–635. This provision lives on in 28 U. S. C. § 2241(c)(2). And in 1842, Congress permitted federal courts to issue habeas process to state custodians detaining foreign officials whose acts implicated the law of nations. Act of Aug. 29, 1842, Ch. 257, 5 Stat. 539. It, too, lives on in 28 U. S. C. § 2241(c)(4).

a federal court was powerless to revisit those proceedings unless the state court had acted without jurisdiction. *E. g.*, *In re Graham*, 138 U. S. 461, 462 (1891); *Tinsley* v. *Anderson*, 171 U. S. 101, 104–106 (1898); *Markuson* v. *Boucher*, 175 U. S. 184, 185–186 (1899); *Medcraf* v. *Hodge*, 245 U. S. 630, 630 (1917) (*per curiam*).

Under the view that prevailed in this country for most of our history, and in England for even longer, *Teague*'s question about the "retroactive" application of "watershed" rules of criminal procedure to undo final criminal judgments would have made no sense. Because a final judgment of conviction, pursuant to a full-fledged criminal trial, was the process due to a criminal serving a custodial sentence, the habeas writ had served its purpose. A final judgment evidenced a lawful basis for confinement and was "binding on all the world." *Ex parte Watkins*, 3 Pet., at 207.

II

Only in the middle of the twentieth century did things really begin to change. In 1915, this Court suggested that a state court's extreme departure from "established modes" of criminal trial practice, such as proceeding under the specter of mob violence, might be akin to the loss of "jurisdiction," at least if no corrective mechanism like an appeal existed. *Frank* v. *Mangum*, 237 U. S. 309, 326, 335–336 (1915). But if that represented an innovation, it was a modest one.

The same cannot be said for *Brown* v. *Allen*, 344 U. S. 443, 464, 478 (1953). There, this Court effectively recast habeas as another way for federal courts to redress practically any error of federal law they might find in state court proceedings. Never mind that state courts are obligated to follow federal law under the Supremacy Clause. Never mind that those courts may have already passed on a defendant's argument about his federal rights. See *id.*, at 487; *id.*, at 497–501 (Frankfurter, J.). Never mind, too, that the defendant may have lost on appeal within the state court system, and even petitioned this Court for direct review. See *id.*, at 456–457; *id.*, at 489–497 (Frankfurter, J.). Everyone accepts that, in our criminal justice system today, a judgment becomes final only after the completion of a trial and the appellate process, including the opportunity to seek certiorari from this Court on questions of federal law. See *Clay* v. *United States*, 537 U. S. 522, 527 (2003).[2] Yet, even after all that, *Brown* held, a federal district court could *still* vacate a final state court judgment based on any perceived error of federal law it might detect—and do so though the entire state judicial system and this Court had seen nothing amiss. 344 U. S., at 465–487; *id.*, at 506–507 (Frankfurter, J.).

The result? As Justice Jackson warned, habeas became little more than an ordinary appeal with an extraordinary Latin name. The Court "so departed from [the finality] principle that the profession now believes that the issues [federal courts] *actually consider* [in] habeas corpus are substantially the same as would be considered on appeal." *Id.*, at 540 (Jackson, J., concurring in result). "The fatal sentence that in real life writes *finis* to many causes"—*Judgment affirmed.* or *Certiorari denied.*—became "in legal theory . . . a complete blank." *Id.*, at 543. Justice Jackson feared that this result not only "trivializ[ed] . . . the writ," but promised practical problems too. *Id.*, at 536. A large new "haystack" of frivolous habeas petitions was sure to follow, making it that much harder for courts to identify

[2] When a sovereign furnishes an opportunity to appeal (as state and federal governments now do), it necessarily invites an appellate court to revisit an initial merits determination. See J. Baker, An Introduction to English Legal History 148–153 (5th ed. 2019) (describing development of the appeal at common law); G. Jacob, A New Law-Dictionary (1729) (defining "appeal"). Under an appellate system, then, "none of th[e] [preceding decisions] are final" in an ultimate sense until any appeals are concluded. 3 W. Blackstone, Commentaries on the Laws of England 411 (1768).

the meritorious "needle." *Id.*, at 537. The only solution Justice Jackson could see was to hold fast to the traditional rule: A final judgment, after completion of trial and the exhaustion of any direct appellate review, was res judicata, and the sole exception was a lack of jurisdiction. *Id.*, at 543–544.

Brown not only upended centuries of settled precedent and invited practical problems; it produced anomalies as well. The very same term it decided *Brown*, this Court *rejected* *Brown*'s fix-any-error approach for final judgments issued by military courts. *Burns* v. *Wilson*, 346 U. S. 137, 142 (1953) (plurality opinion); *id.*, at 147 (Minton, J., concurring in judgment). So only state convicts—not United States service members—were afforded an additional avenue for appellate relief in the garb of habeas corpus proceedings. It turned out, too, that only state courts—not executive tribunals—were forced to suffer the indignity of having their final judgments reopened. So federal courts wound up with more power to reopen the judgments of a different sovereign's courts than the administrative proceedings of the federal government itself. See *Rushing* v. *Wilkinson*, 272 F. 2d 633, 641 (CA5 1959); M. Howe, Foreword: The Supreme Court, 1952 Term, 67 Harv. L. Rev. 91, 160–162 (1953).

With time, these implications became clear and, as Justice Jackson predicted, *Brown*'s innovation proved unsustainable. The haystack just grew too large. During the 1960s, this Court incorporated the exclusionary rule against the States. *Mapp* v. *Ohio*, 367 U. S. 643, 655 (1961). It announced a Sixth Amendment right to a public defender. *Gideon* v. *Wainwright*, 372 U. S. 335, 339–340, 342 (1963). It barred the government from speaking to the defendant outside defense counsel's presence. *Massiah* v. *United States*, 377 U. S. 201, 204–206 (1964). And it announced a new script governing police interrogations. *Miranda* v. *Arizona*, 384 U. S. 436, 467–477 (1966). This proliferation of new federal procedural rights, combined with a federal post-conviction mechanism that functioned like an ordinary appeal, soon yielded a giant haystack of habeas petitions.

For years, this Court struggled to devise rules for sorting the hay from the needles. Its approach varied wildly and inconsistently over time. In a few cases, the Court held a new rule of criminal procedure should not apply retroactively to settled convictions. *Tehan* v. *United States ex. rel. Shott*, 382 U. S. 406, 409, n. 3, 419 (1966); *Linkletter* v. *Walker*, 381 U. S. 618, 622, 639–640 (1965). On occasion, though, it extended the benefit of a new rule to litigants with final criminal judgments—sometimes only to the named petitioner in this Court, *Jackson* v. *Denno*, 378 U. S. 368, 377 (1964), other times to everyone laboring under a final judgment, *McNerlin* v. *Denno*, 378 U. S. 575, 575 (1964) (*per curiam*). Justice Harlan called these divergent results "an extraordinary collection of rules." *Desist* v. *United States*, 394 U. S. 244, 256–257 (1969) (Harlan, J., dissenting). He even wondered whether they could "properly be considered the legitimate products of a court of law." *Id.*, at 259.

III

It was only in this world that *Teague*'s question about the retroactive application of new "watershed" rules of criminal procedure could even begin to make sense. In an effort to bring some coherence to the area, the Court refocused its attention on the terms of the federal habeas statute. The statute provides that "[w]rits of habeas corpus *may* be granted"—not that they *must* be granted. 28 U. S. C. § 2241(a) (emphasis added); see also § 2243. The law thus invests federal courts with equitable discretion to decide whether to issue the writ or to provide a remedy. *Withrow* v. *Williams*, 507 U. S. 680, 716 (1993) (Scalia, J., concurring in part and dissenting in part).[3]

[3] That is how this Court reads nearly identical text in the Declaratory Judgment Act (DJA). Because the DJA says federal courts "'*may* declare the rights and other legal relations of any interested party,'" district

Exercising this remedial discretion, the Court began to develop doctrines aimed at returning the Great Writ closer to its historic office. It decided that some claims are not cognizable on federal habeas review if state courts provide a mechanism for review. *Stone* v. *Powell*, 428 U. S. 465, 494–495 (1976). It established procedural default rules to prevent habeas petitioners from evading independent and adequate state law grounds for sustaining their convictions. *Wainwright* v. *Sykes*, 433 U. S. 72, 86–87 (1977). It crafted a heightened harmless error standard, calibrated to reflect the finality interests at stake in the post-conviction context. *Brecht* v. *Abrahamson*, 507 U. S. 619, 633–638 (1993). And it applied abuse-of-the-writ rules to prevent an endless cycle of petition and re-petition by prisoners with nothing but time on their hands. *McCleskey* v. *Zant*, 499 U. S. 467, 489–493 (1991).

Chief among these new-but-old developments was *Teague*. Drawing on the historic role of habeas, the Court held that newly recognized rules of criminal procedure should not normally apply to cases "which have become final." 489 U. S., at 304–310.[4] Hard experience since *Brown* had reminded the Court that finality, "the idea that at *some* point a criminal conviction reaches an end, a conclusion, a termination, 'is essential to the operation of our criminal justice system.'" *Prost* v. *Anderson*, 636 F. 3d 578, 582 (CA10 2011). One might "always continue to ask" whether a particular judgment was "correct." P. Bator, Finality in Criminal Law and Federal Habeas Corpus for State Prisoners, 76 Harv. L. Rev. 441, 446–448 (1963). But if the rule of law means anything, it means the final result of proceedings in courts of competent jurisdiction *establishes* what is correct "in the eyes

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courts "possess discretion" to award declaratory relief. *Wilton* v. *Seven Falls Co.*, 515 U. S. 277, 282, 286 (1995).

[4] Although the lead opinion in *Teague* garnered only a plurality, a majority of the Court adopted the plurality's rule later that same year in *Penry* v. *Lynaugh*, 492 U. S. 302, 313 (1989).

of the law." *Herrera* v. *Collins*, 506 U. S. 390, 399–400 (1993).[5]

IV

While *Teague* did much to return the writ to its original station, it didn't quite complete the journey. After insisting that final judgments cannot be reopened as a "general rule," *Teague* left some wiggle room. It added that some new rules of criminal procedure might yet apply retroactively if they had "watershed" significance. 489 U. S., at 311. Why? Because " 'time and growth in social capacity, as well as judicial perceptions,' " might " 'alter our understanding of the *bedrock procedural elements*' " necessary to satisfy notions of " 'fairness.' " *Ibid.* To help the world know what a watershed rule might look like, the Court described it in various ways—"bedrock," "fundamental," "central," an "absolute prerequisite." *Id.*, at 311–314. A rule fitting that bill, *Teague* said, would do two things: (1) " 'significantly improve' " existing procedures for determining factual guilt or innocence and (2) "implicate the fundamental fairness of the trial." *Id.*, at 312–313.[6]

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[5] Apparently believing our judge-made doctrines did not go far enough, Congress added further "new restrictions" of its own in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). *Felker* v. *Turpin*, 518 U. S. 651, 664 (1996). But AEDPA creates only additional conditions to relief; it did not do away with the discretion afforded courts in the habeas statute, or the various rules this Court has formulated in the exercise of that discretion. As this Court has (unanimously) explained, "AEDPA did not codify *Teague*" and the one "neither abrogates [n]or qualifies the other." *Greene* v. *Fisher*, 565 U. S. 34, 39 (2011). That is why *Teague*'s retroactivity bar operates "in addition" to AEDPA's relitigation bar in 28 U. S. C. § 2254(d). *Horn* v. *Banks*, 536 U. S. 266, 272 (2002) (*per curiam*). Because a retroactivity bar and a relitigation bar both pose threshold barriers, Justice Thomas's concurrence highlights how AEDPA provides an *additional* reason why the Fifth Circuit correctly denied a certificate of appealability here. *Ante*, at 280 (concurring opinion); see *Miller-El* v. *Cockrell*, 537 U. S. 322, 350 (2003) (Scalia, J., concurring).

[6] *Teague* also discussed an exception to the finality rule for certain "substantive rules." Because the parties agree that *Ramos* involved only a

But all these words have yielded nothing. In more than three decades since *Teague*, not a single new rule of criminal procedure has satisfied its "watershed" test. *Ante*, at 267–272. Nor is it as if we have lacked promising candidates. This Court has refused "watershed" status to new rules that seek to ensure death penalty decisions are made by jurors rather than judges. See *Schriro* v. *Summerlin*, 542 U. S. 348 (2004) (denying watershed status to *Ring* v. *Arizona*, 536 U. S. 584 (2002)). New rules designed to ensure race discrimination plays no role in jury selection met the same fate even before *Teague*. See *Allen* v. *Hardy*, 478 U. S. 255 (1986) (*per curiam*) (denying retroactive application to *Batson* v. *Kentucky*, 476 U. S. 79 (1986)). Rules that sought to realign our jurisprudence with the original meaning of the Sixth Amendment's Confrontation Clause have failed to qualify too. See *Whorton* v. *Bockting*, 549 U. S. 406 (2007) (denying watershed status to *Crawford* v. *Washington*, 541 U. S. 36 (2004)).

The Court's decision today retraces this familiar path. It denies "watershed" status to *Ramos* v. *Louisiana*, 590 U. S. 83 (2020), a decision that (like *Crawford*) returned us to the original meaning of the Sixth Amendment—and one that (like *Ring* and *Batson*) concerns a vital aspect of the jury trial right. The Court explains why this result necessarily follows from our post-*Teague* precedents: If so many other highly consequential rulings have failed to clear *Teague*'s bar, it's hard to see how *Ramos* might. One could

new rule of criminal procedure, little need be said about *Teague*'s "substantive rule" exception. But it is worth noting that substantive rules, which place certain conduct " 'beyond the power of the criminal law-making authority to proscribe,' " 489 U. S., at 307, bear at least some resemblance to this Court's early cases finding a lack of jurisdiction over a defendant or an offense. See *Ex parte Siebold*, 100 U. S., at 376; *Ex parte Parks*, 93 U. S., at 20–21. Perhaps this aspect of *Teague* can be understood as accurately invoking the jurisdictional exception to the finality rule; perhaps not. See *Brown*, 344 U. S., at 533, n. 4 (Jackson, J., concurring in result). But that question is for another day.

even say that any other result would defy this Court's recent precedents. *Ante*, at 270–271.

At the same time, though, one might *also* say these precedents illustrate how mystifying the whole *Teague* project has been from its inception. If *Teague* only prohibits the retroactive application of *new* rules of criminal procedure, after all, it's not exactly obvious why that prohibition applies to cases like *Crawford* or *Ramos*. Both decisions sought to realign this Court's decisions with the original meaning of the Sixth Amendment; in that sense, the rights they recognized were anything but new. And to the extent *Teague* asks whether a new rule is "fundamental" or "bedrock," it's hard to see how rights originally memorialized in the Constitution could fail to qualify. Certainly, this Court is in no position to second-guess the judgment of those who wrote and ratified the Constitution. Surely, too, many of the other rules of criminal procedure this Court has found less than "fundamental" since *Teague* seem anything but that to those whose lives they affect. Nor is it only *Teague*'s results that mystify. The test itself has been fraught with contradictions from the start. It asks litigants to be on the lookout for new procedural protections " 'implicit in the concept of ordered liberty.' " *Beard* v. *Banks*, 542 U. S. 406, 417 (2004). At the same time, we have been told, the fact that "a new procedural rule is 'fundamental' in some abstract sense is not enough." *Summerlin*, 542 U. S., at 352.

For me, it's here where the history canvassed above matters. This Court's (in)activity since *Teague* only begins to make sense when viewed against the backdrop of the traditional rule that old judgments are impervious to new challenges. Yes, this Court's decisions should apply to all cases pending in trial courts and on direct appeal. But they should not apply retroactively in habeas. The reason has nothing to do with whether Members of this Court happen to think the rules they announce are "new" in some sense or insufficiently "fundamental" in another. It's simpler than that: The writ of habeas corpus does not authorize federal courts to reopen a judgment issued by a court of competent jurisdiction once it has become final. *Supra*, at 283–286.

It's here, too, where today's decision makes its real contribution. If *Teague* pointed us back in the direction of the traditional rule, each of the cases that has followed in its wake has edged us, step-by-step, closer still. Today's decision advances the progress by making express what has long been barely implicit: The "watershed" exception for new rules of criminal procedure is no exception at all. *Ante*, at 272. Not only does this development do much to honor the traditional understanding of habeas review and the great weight of this Court's precedents throughout its history. It also allows us to retire a test that was unknown in law until 1989 and whose contours remain unknowable decades later. It frees this Court from the dreary task of needing to concoct reasons to denigrate the importance of obviously important rules like those discussed in *Ramos*, *Ring*, *Batson*, and *Crawford*, which affect the lives and liberty of countless individuals. It does away with the strange business of having to repackage old rules as new ones. And it eliminates the need for litigants and lower courts to endure years of protracted litigation—tangling with a contradictory test and seemingly inexplicable precedents—all sure to achieve nothing. The Court's candor today is admirable—and correct.[7]

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[7] The dissent criticizes today's decision as a departure from modern habeas precedent. *Post*, at 296; *post*, at 297, n. 2; *post*, at 305–307. But the dissent's history is selective. The dissent champions decisions from the 1950s, '60s, and '70s. But it disregards how those decisions departed from a century of this Court's precedents and the common law before that. *Supra*, at 286–289. At the same time, the dissent's account overlooks this Court's precedents refusing to afford retroactive application in every case since the 1980s. *Post*, at 303–304; *post*, at 305–306, n. 7. The dissent may prefer decisions within a particular 30-year window. But it is too much to say this preference is required to "[r]espec[t] *stare decisis*." *Post*, at 295, n. 1.

With these observations, I am pleased to join the Court's opinion. My vote in similar cases to come will, I hope, "be guided as nearly as [possible] by the principles set forth herein." *Brown*, 344 U. S., at 548 (Jackson, J., concurring in result).

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

"A verdict, taken from eleven, [i]s no verdict at all," this Court proclaimed just last Term. *Ramos* v. *Louisiana*, 590 U. S. 83, 90 (2020) (internal quotation marks omitted). Citing centuries of history, the Court in *Ramos* termed the Sixth Amendment right to a unanimous jury "vital," "essential," "indispensable," and "fundamental" to the American legal system. *Id.*, at 90, 91, 93. The Court therefore saw fit to disregard *stare decisis* and overturn a 50-year-old precedent enabling States to convict criminal defendants based on non-unanimous verdicts.[1] And in taking that weighty step, the Court also vindicated core principles of racial justice. For in the Court's view, the state laws countenancing non-unanimous verdicts originated in white supremacism and continued in our own time to have racially discriminatory effects. See *id.*, at 87–88; *id.*, at 114–115 (SOTOMAYOR, J., concurring in part); *id.*, at 126–129 (KAVANAUGH, J., concurring in part). Put all that together, and it is easy to see why the opinions in *Ramos* read as historic. Rarely does this Court make such a fundamental change in the rules thought necessary to ensure fair criminal process. If you were scanning a thesaurus for a single word

[1] I dissented in *Ramos* precisely because of its abandonment of *stare decisis*. See 590 U. S., at 144–147 (ALITO, J., dissenting); see also *Kimble* v. *Marvel Entertainment, LLC*, 576 U. S. 446, 455 (2015) ("Respecting *stare decisis* means sticking to some wrong decisions"). Now that *Ramos* is the law, *stare decisis* is on its side. I take the decision on its own terms, and give it all the consequence it deserves.

to describe the decision, you would stop when you came to "watershed."

Yet the Court insists that *Ramos*'s holding does not count as a "watershed" procedural rule under *Teague* v. *Lane*, 489 U. S. 288, 311 (1989) (plurality opinion). The result of today's ruling is easily stated. *Ramos* will not apply retroactively, meaning that a prisoner whose appeals ran out before the decision can receive no aid from the change in law it made. So Thedrick Edwards, unlike Evangelisto Ramos, will serve the rest of his life in prison based on a 10-to-2 jury verdict. Only the reasoning of today's holding resists explanation. The majority cannot (and indeed does not) deny, given all *Ramos* said, that the jury unanimity requirement fits to a tee *Teague*'s description of a watershed procedural rule. Nor can the majority explain its result by relying on precedent. Although flaunting decisions since *Teague* that held rules non-retroactive, the majority comes up with none comparable to this case. Search high and low the settled law of retroactivity, and the majority still has no reason to deny *Ramos* watershed status.

So everything rests on the majority's last move—the overturning of *Teague*'s watershed exception. If there can never be *any* watershed rules—as the majority here asserts out of the blue—then, yes, jury unanimity cannot be one. The result follows trippingly from the premise. But adopting the premise requires departing from judicial practice and principle. In overruling a critical aspect of *Teague*, the majority follows none of the usual rules of *stare decisis*. It discards precedent without a party requesting that action. And it does so with barely a reason given, much less the "special justification" our law demands. *Halliburton Co.* v. *Erica P. John Fund, Inc.*, 573 U. S. 258, 266 (2014). The majority in that way compounds its initial error: Not content to misapply *Teague*'s watershed provision here, see *ante*, at 267–271, the majority forecloses any future application, see *ante*, at 271–272. It prevents any procedural rule ever—no matter how integral to adjudicative fairness—from benefiting a defendant on habeas review. Thus does a settled principle of retroactivity law die, in an effort to support an insupportable ruling.

I

Start with what *Teague* and its progeny repeatedly said about what makes a new rule of criminal procedure "watershed" (so that, before today, the rule applied retroactively).[2] A watershed rule, we held, is "implicit in the concept of ordered liberty." *Teague*, 489 U. S., at 311 (plurality opinion) (internal quotation marks omitted). Such a rule addresses one of "the bedrock procedural elements" of the criminal process. *Ibid.* (emphasis deleted). Or similarly stated, it plays a "fundamental" and "central[ ]" role in a trial. *Beard* v. *Banks*, 542 U. S. 406, 418, 420 (2004). More specifically, a new rule, to qualify as watershed, must be "essential to [the trial's] fairness." *Whorton* v. *Bockting*, 549 U. S. 406, 418 (2007); see *Teague*, 489 U. S., at 312 (plurality opinion). And it must go to the defendant's guilt or innocence, "prevent[ing] an impermissibly large risk of an inaccurate conviction." *Whorton*, 549 U. S., at 418 (internal quotation marks omitted); see *Teague*, 489 U. S., at 312 (plurality opinion). Those requirements set a high bar. But they capture—or anyway, were once meant to—a "small core of rules" needed to fairly adjudicate a defendant's guilt. *Beard*, 542 U. S., at 417.

The first clue that the unanimity rule falls within *Teague*'s small core is that the Court thought its adoption justified overturning precedent. *Ramos* didn't just announce a new rule. It reversed a prior, well-settled one. As the majority recounts, "*Ramos* repudiated this Court's 1972 decision in

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[2] Prior to *Teague*, the Court gave retroactive effect to a somewhat wider range of new procedural rules. See *ante*, at 282, n. 5; *Danforth* v. *Minnesota*, 552 U. S. 264, 271–273 (2008). To find the no-retroactivity-ever rule that the majority announces today, a time traveler would have to go back to around 1950—when the Bill of Rights' protections for criminal defendants did not even apply to the States. See *ibid.*

Apodaca v. *Oregon*, 406 U. S. 404, which had allowed non-unanimous juries in state criminal trials." *Ante*, at 258. Such a toppling of precedent needs a special justification—more than a run-of-the-mill claim of error. To meet that demand, the *Ramos* majority described *Apodaca* as flouting the essential "meaning of the Sixth Amendment's jury trial right," as revealed in both historical practice and judicial decisions. 590 U. S., at 106. Two concurring Justices added, to support discarding this "egregiously wrong" precedent, that the unanimity rule prevents improper verdicts: *Apodaca* "sanctions the conviction" of some defendants who would otherwise defeat the State's efforts "to [meet] its burden" of proving guilt. 590 U. S., at 126 (KAVANAUGH, J.); *id.*, at 113 (SOTOMAYOR, J.). And the majority and concurrences alike invoked racial justice to support abandoning *stare decisis*, explaining how a non-unanimity rule has posed a special danger of canceling Black jurors' votes. See *id.*, at 87–88, 106; *id.*, at 114–115 (SOTOMAYOR, J.); *id.*, at 126–129 (KAVANAUGH, J.); *infra*, at 301–302. At bottom, then, the Court took the unusual step of overruling precedent for the most fundamental of reasons: the need to ensure, in keeping with the Nation's oldest traditions, fair and dependable adjudications of a defendant's guilt. In this much alone, *Ramos*'s reasoning evokes this Court's descriptions of watershed rules.[3]

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[3] The majority misunderstands my point about the interaction between *stare decisis* and *Teague*. I am not saying that if a "right is important enough to justify overruling" precedent, then it is "important enough to apply retroactively." *Ante*, at 272. (If that were my claim, this dissent would be far shorter.) Rather, the overruling of precedent—and more, the justifications given to support that overruling—are elements to consider when deciding on a rule's watershed status. Or, as I say above, "a first clue." Here, that clue cuts against the majority: *Ramos* overturned precedent (rather than just announcing a new rule) on grounds strikingly reminiscent of *Teague*'s criteria for watershed status. Still more clues, pointing in the same direction, appear in the coming pages . . . .

And putting talk of *stare decisis* aside, there remains much more in *Ramos* to echo *Teague.* If, as today's majority says, *Teague* is full of "adjectives," *ante,* at 267, so too is *Ramos*—and mostly the same ones. Jury unanimity, the Court pronounced, is an "essential element[ ]" of the jury trial right, and thus is "fundamental to the American scheme of justice." 590 U. S., at 92–93. The Court discussed the rule's "ancient" history—"400 years of English and American cases requiring unanimity" leading up to the Sixth Amendment. *Id.,* at 100, 97. As early as the 14th century, English common law recognized jury unanimity as a "vital right." *Id.,* at 90. Adopting that view, the early American States likewise treated unanimity as an "essential feature of the jury trial." *Id.,* at 91. So by the time the Framers drafted the Sixth Amendment, "the right to a jury trial *meant* a trial in which the jury renders a unanimous verdict." *Id.,* at 98 (emphasis in original). Because that was so, no jury verdict could stand (or in some metaphysical sense, even exist) absent full agreement: "A verdict, taken from eleven, was no verdict at all." *Id.,* at 90 (internal quotation marks omitted). Unanimity served as a critical safeguard, needed to protect against wrongful deprivations of citizens' "hard-won liberty." *Id.,* at 100. Or as Justice Story summarized the law a few decades after the Founding: To obtain a conviction, "unanimity in the verdict of the jury is indispensable." *Id.,* at 91.

If a rule so understood isn't a watershed one, then nothing is. (And that is, of course, what the majority eventually says.) Once more, from the quotations just above: "fundamental," "essential," "vital," "indispensable." No wonder today's majority declares a new-found aversion to "adjectives"—or, as a concurring opinion says, "all these words." *Ante,* at 267; *ante,* at 292 (GORSUCH, J., concurring). The unanimity rule, as *Ramos* described it, is as "bedrock" as bedrock comes. *Teague,* 489 U. S., at 315 (plurality opinion). It is as grounded in the Nation's constitutional traditions—with centuries-old practice becoming part of the Sixth Amendment's original meaning. And it is as central to the Nation's idea of a fair and reliable guilty verdict. When can the State punish a defendant for committing a crime? Return again to *Ramos*, this time going back to Blackstone: Only when "the truth of [an] accusation" is "confirmed by the unanimous suffrage" of a jury "of his equals and neighbours." 590 U. S., at 90 (quoting 4 Commentaries on the Laws of England 343 (1769)). For only then is the jury's finding of guilt certain enough—secure enough, mistake-proof enough—to take away the person's freedom.

Twice before, this Court retroactively applied rules that are similarly integral to jury verdicts. First, in *Ivan V.* v. *City of New York*, 407 U. S. 203, 204 (1972) (*per curiam*), we gave "complete retroactive effect" to the rule of *In re Winship*, 397 U. S. 358 (1970), that a jury must find guilt "beyond a reasonable doubt." Like *Ramos*, *Winship* rested on an "ancient" legal tradition incorporated into the Constitution. 397 U. S., at 361. As in *Ramos*, that tradition served to "safeguard men" from "unjust convictions, with resulting forfeitures" of freedom. 397 U. S., at 362. And as in *Ramos*, that protection plays a "vital" part in "the American scheme of criminal procedure." 397 U. S., at 363–364. With all that established, the *Ivan V.* Court needed just two pages to hold *Winship* retroactive, highlighting the reasonable-doubt standard's "indispensable" role in "reducing the risk" of wrongful convictions. 407 U. S., at 204–205. Second, in *Brown* v. *Louisiana*, 447 U. S. 323 (1980), we retroactively applied the rule of *Burch* v. *Louisiana*, 441 U. S. 130 (1979), that a six-person guilty verdict must be unanimous. Think about that for a moment: We held retroactive a unanimity requirement, no different from the one here save that it applied to a smaller jury. The reasoning should by now sound familiar. Allowing conviction by a non-unanimous jury "impair[s]" the "purpose and functioning of the jury," undermining the Sixth Amendment's very "essence." *Brown*, 447 U. S., at 331 (plurality opinion). It "raises serious doubts about the fairness of [a] trial." *Id.*, at 335, n. 13. And it fails to "assure the reliability of [a guilty] verdict." *Id.*, at 334. So when a jury has divided, as when it has failed to apply the reasonable-doubt standard, "there has been no jury verdict within the meaning of the Sixth Amendment." *Sullivan* v. *Louisiana*, 508 U. S. 275, 280 (1993).[4]

And something still more supports retroactivity here, for the opinions in *Ramos* (unlike in *Winship* or *Burch*) relied on a strong claim about racial injustice. The Court detailed the origins of Louisiana's and Oregon's non-unanimity rules, locating them (respectively) in a convention to "establish the supremacy of the white race" and "the rise of the Ku Klux Klan." 590 U. S., at 87–88 (internal quotation marks omitted). Those rules, the Court explained, were meant "to dilute the influence [on juries] of racial, ethnic, and religious minorities"—and particularly, "to ensure that African-American

[4] The majority argues that *Ivan V.* and *Brown* applied these new rules only to cases on direct appeal. See *ante*, at 269–270, n. 5. But that isn't right. Although *Ivan V.* itself involved a direct appeal, the Court has made clear that the "complete retroactive effect" *Ivan V.* gave *Winship* included cases in habeas. See, *e. g.*, *United States* v. *Johnson*, 457 U. S. 537, 562–563, n. 21 (1982). And similarly, lower courts uniformly understood *Brown* to govern habeas cases, even though a concurring opinion (which supplied the ruling's fifth and sixth votes) addressed only cases on direct appeal. See, *e. g.*, *Atkins* v. *Listi*, 625 F. 2d 525, 526 (CA5 1980); see also *Brown*, 447 U. S., at 337 (opinion of Powell, J., joined by Stevens, J.). Those applications to habeas cases make sense because the Court of that time did not often distinguish in its retroactivity rulings between direct and collateral review. See *Stovall* v. *Denno*, 388 U. S. 293, 300–301 (1967). For that reason, the majority must fall back on the argument that "*Brown* and *Ivan V.* were pre-*Teague* decisions" and "*Teague* tightened the previous standard" for retroactivity. *Ante*, at 270, n. 5. That is true enough, see *supra*, at 297, n. 2, but irrelevant here given *Brown* and *Ivan V*'s reasoning. As just noted, each of those decisions said everything a court would say today in designating a new rule "watershed"—in essence, that the rule is central to the process of fairly deciding on a defendant's guilt.

juror service would be meaningless." *Id.*, at 88 (internal quotation marks omitted). Two concurring opinions linked that history to current practice. "In light of the[ir] racist origins," JUSTICE KAVANAUGH stated, "it is no surprise that non-unanimous juries can make a difference"—that "[t]hen and now" they can "negate the votes of black jurors, especially in cases with black defendants." *Id.*, at 127; see *id.*, at 114–115 (SOTOMAYOR, J.). But that statement precludes today's result. If the old rule functioned "as an engine of discrimination against black defendants," *id.*, at 127 (KAVANAUGH, J.), its replacement must "implicat[e]" (as watershed rules do) "the fundamental fairness and accuracy of the criminal proceeding," *Beard*, 542 U. S., at 417 (internal quotation marks omitted). Or as JUSTICE KAVANAUGH put the point more concretely, the unanimity rule then helps prevent "racial prejudice" from resulting in wrongful convictions. *Ramos*, 590 U. S., at 129. The rule should therefore apply not just forward but back, to all convictions rendered absent its protection.

II

The majority argues in reply that the jury unanimity rule is not so fundamental because . . . . Well, no, scratch that. Actually, the majority doesn't contest anything I've said about the foundations and functions of the unanimity requirement. Nor could the majority reasonably do so. For everything I've said about the unanimity rule comes straight out of *Ramos*'s majority and concurring opinions. Just check the citations: I've added barely a word to what those opinions (often with soaring rhetoric) proclaim. Start with history. The ancient foundations of the unanimous jury rule? Check. The inclusion of that rule in the Sixth Amendment's original meaning? Check. Now go to function. The fundamental (or bedrock or central) role of the unanimous jury in the American system of criminal justice? Check. The way unanimity figures in ensuring fairness in criminal trials and protecting against wrongful guilty verdicts? Check. The link between those purposes and safeguarding the jury system from (past and present) racial prejudice? Check. In sum: As to every feature of the unanimity rule conceivably relevant to watershed status, *Ramos* has already given the answer—check, check, check—and today's majority can say nothing to the contrary.[5]

Instead, the majority relies on decisions holding non-retroactive various other—even though dissimilar—procedural rules. In making that argument from past practice, the majority adopts two discrete tactics. Call the first "throw everything against the wall." Call the second "slice and dice." Neither can avail to render the jury unanimity rule anything less than what *Ramos* thought it—as the majority concedes, "momentous." *Ante*, at 270.

As its first move, the majority lists as many decisions holding rules non-retroactive as it can muster. See *ante*, at 267–269 (reviewing a "long line of cases"). The premise here is that sheer volume matters: The majority presents the catalog as if every rule is as important as every other and as if comparing any to the unanimity requirement is beside the point. But that idea founders on this Court's constant refrain that watershed rules are only a small subset of proce-

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[5] The majority does try to say that the plurality opinion in *Ramos* nonetheless "plainly foreshadowed today's decision" by noting that *Teague*'s watershed test was "demanding by design," in recognition of the States' reliance interests. *Ante*, at 273 (internal quotation marks omitted); see also *ante*, at 274–275 (repeating the assertion twice more). But the *Ramos* plurality's description of the watershed test was nothing more than objective fact: Yes, the watershed test was purposefully demanding. As to whether the watershed test was *so* demanding as to exclude the jury unanimity rule, here is what the plurality had to say: "Whether the right to jury unanimity applies to cases on collateral review is a question for a future case where the parties will have a chance to brief the issue and we will benefit from their adversarial presentation." *Ramos*, 590 U. S., at 109. Not a lot of "plain[ ] foreshadow[ing]" there. Only a fair bit of wisdom about how to resolve legal issues—which, as I'll later discuss, the majority could usefully have considered before overruling the watershed exception. See *infra*, at 306–307.

dural rules. See, *e. g., Graham* v. *Collins*, 506 U. S. 461, 478 (1993). For under that view (as under the very meaning of "watershed"), nothing could be less surprising than that non-watershed rules greatly outnumber watershed ones. That inexorable fact cannot refute the designation of any given rule—much less of jury unanimity—as watershed. And the majority's kitchen-sink list becomes yet less probative of the issue here because most of its bulk comes from decisions on sentencing. See *ante*, at 267–268 (citing *Beard*, 542 U. S., at 408; *O'Dell* v. *Netherland*, 521 U. S. 151, 153 (1997); *Lambrix* v. *Singletary*, 520 U. S. 518, 540 (1997); *Sawyer* v. *Smith*, 497 U. S. 227, 229 (1990); *Schriro* v. *Summerlin*, 542 U. S. 348, 352 (2004)). But *Teague* itself explains why sentencing procedures are not watershed: A watershed rule, the Court said there, must go to the jury's "determination of innocence or guilt." 489 U. S., at 313 (plurality opinion); see *Beard*, 542 U. S., at 417. So the majority's indiscriminate inventory of non-retroactive rules cannot get it home.

Enter the majority's second stratagem, which tries to conquer by dividing. Here, the majority picks out "three aspects of *Ramos*" pointing toward watershed status, and names one prior decision to match each of the three. *Ante*, at 268. So in addressing the unanimity rule's "significance," the majority notes that the Court once held the jury-trial right non-retroactive. *Ante*, at 269 (citing *DeStefano* v. *Woods*, 392 U. S. 631, 633 (1968) (*per curiam*) and *Duncan* v. *Louisiana*, 391 U. S. 145 (1968)). In tackling *Ramos*'s return to "original meaning," the majority points to our decision that an originalist rule about hearsay evidence should not apply backward. *Ante*, at 270 (citing *Whorton*, 549 U. S., at 421 and *Crawford* v. *Washington*, 541 U. S. 36 (2004)). And in discussing *Ramos*'s role in "prevent[ing] racial discrimination," the majority invokes our denial of retroactivity to a rule making it easier to prove race-based peremptory strikes. *Ante*, at 270 (citing *Allen* v. *Hardy*, 478 U. S. 255, 261 (1986) (*per curiam*) and *Batson* v. *Kentucky*, 476 U. S. 79 (1986)).

What the majority doesn't find—or even pretend to—is any decision corresponding to *Ramos* on all of those dimensions. Take just a pair of examples. The Court has never suggested that requiring a bench trial has race-based purposes or effects. See *DeStefano*, 392 U. S., at 633–635.[6] Similarly, the Court thought its new rule on hearsay evidence of less than towering import: Calling the rule "limited in scope," we doubted that it would have any effect on the "accuracy of factfinding." *Whorton*, 549 U. S., at 419. I'll resist making like points about other permutations because the main point here is a general one. The majority must slice and dice in this way—dividing *Ramos* into three for purposes of comparison—because it cannot find any rule analogous to jury unanimity on all relevant fronts. And that is for a simple reason: No procedure adopted since *Teague* so comprehensively fulfills that decision's criteria for retroactivity. If any rule is watershed, it is jury unanimity. See *supra*, at 299–300.

So the majority is left to overrule *Teague*'s holding on watershed rules.[7] On the last page or so of its merits discus-

[6] Even on the metric of significance alone, the Court has not previously ranked the jury-unanimity and jury-trial rights as today's majority does. As earlier noted, the Court in *Brown* found a unanimity rule retroactive despite its earlier holding that the jury-trial right was not. See *supra*, at 300–301. The Court explained that the accuracy and fairness concerns raised by divided juries—where, by definition, at least one person retains reasonable doubt—exceed those arising from judicial verdicts. See *Brown*, 447 U. S., at 334–335, n. 13 (plurality opinion). In insisting otherwise, the majority falls prey to a common greater-includes-the-lesser fallacy—akin to the view that if a State can eliminate a jury, it can impose jury rules of whatever kind it likes. See *ante*, at 269 (reasoning that the treatment of a "broader" right controls that of a "subsidiary" right); *Brown*, 447 U. S., at 334–335, n. 13 (rejecting precisely that view).

[7] In describing the majority as overruling *Teague*, I do not mean it overrules only *Teague*. That decision doesn't stand alone in stating the watershed exception as governing law. As I count, the Court has recited the exception 17 more times before today. See *Montgomery* v. *Louisiana*, 577 U. S. 190, 198 (2016); *Welch* v. *United States*, 578 U. S. 120, 128 (2016);

sion (before it turns to pre-butting this dissent), the majority eliminates the watershed exception, declaring it "long past time" to do so. *Ante*, at 272. *Teague* had said there would not be "many" (retroactive) watershed rules. 489 U. S., at 313 (plurality opinion). The majority now says there will be none at all. If that is so, of course, jury unanimity cannot be watershed. Finally, the majority offers an intelligible reason for declining to apply *Ramos* retroactively.

But in taking that road, the majority breaks a core judicial rule: respect for precedent. *Stare decisis* is a foundation stone of the rule of law, "promot[ing] the evenhanded, predictable, and consistent development of legal principles, foster[ing] reliance on judicial decisions, and contribut[ing] to the actual and perceived integrity of the judicial process." *Payne* v. *Tennessee*, 501 U. S. 808, 827 (1991). Adherence to precedent is, of course, "not an inexorable command." *Id.*, at 828. *Ramos* itself teaches that much. But *Ramos* also shows how high *stare decisis* sets the bar for overruling a prior decision. To reverse course, we insist on compelling reasons, thorough explanation, and careful attention to competing interests. But not here. The majority crawls under, rather than leaps over, the *stare decisis* bar.

To begin with, no one here asked us to overrule *Teague*. This Court usually confines itself to the issues raised and briefed by the parties. See, *e. g.*, *United States* v. *Sineneng-*

Chaidez v. *United States*, 568 U. S. 342, 347, n. 3 (2013); *Danforth*, 552 U. S., at 266, 274–275; *Whorton* v. *Bockting*, 549 U. S. 406, 416 (2007); *Beard* v. *Banks*, 542 U. S. 406, 416–417 (2004); *Horn* v. *Banks*, 536 U. S. 266, 271, n. 5 (2002) (*per curiam*); *Tyler* v. *Cain*, 533 U. S. 656, 665 (2001); *Bousley* v. *United States*, 523 U. S. 614, 619–620 (1998); *O'Dell* v. *Netherland*, 521 U. S. 151, 156–157 (1997); *Lambrix* v. *Singletary*, 520 U. S. 518, 539 (1997); *Gray* v. *Netherland*, 518 U. S. 152, 170 (1996); *Caspari* v. *Bohlen*, 510 U. S. 383, 396 (1994); *Graham* v. *Collins*, 506 U. S., 461, 477–478 (1993); *Gilmore* v. *Taylor*, 508 U. S. 333, 345 (1993); *Saffle* v. *Parks*, 494 U. S. 484, 494–495 (1990); *Sawyer* v. *Smith*, 497 U. S. 227, 241–242 (1990).

Smith, 590 U. S. 371, 375 (2020) (discussing "the principle of party presentation"). There may be reasons to ignore that rule in one or another everyday case. But to do so in pursuit of overturning precedent is nothing short of extraordinary. Cf. *Ramos*, 590 U. S., at 123, n. 4 (KAVANAUGH, J.) (An "important factor" protecting *stare decisis* "is that the Court typically does not overrule a precedent unless a party requests overruling"). We are supposed to (fairly) apply the prevailing law until a party asks us to change it. And when a party does make that request, we are supposed to attend to countervailing arguments—which no one here had a chance to make. That orderly process, skipped today, is what enables a court to arrive at a considered decision about whether to overthrow precedent.

Equally striking, the majority gives only the sketchiest of reasons for reversing *Teague*'s watershed exception. In deciding whether to depart from precedent, the Court usually considers—and usually at length—a familiar set of factors capable of providing the needed special justification. See, *e. g.*, *Knick* v. *Township of Scott*, 588 U. S. 180, 203 (2019) (listing such considerations). The majority can't be bothered with that customary, and disciplining, practice; it barely goes through the motions. Seldom has this Court so casually, so off-handedly, tossed aside precedent. In its page of analysis, the majority offers just one ground for its decision—that since *Teague*, the Court has not identified a new rule as watershed, and so "the purported exception has become an empty promise." *Ante*, at 272. But even viewed in the abstract, that argument does not fly. That the Court has not found a watershed rule since *Teague* does not mean it could or would not in the future. *Teague* itself understood that point: It saw value in the watershed exception even while recognizing that watershed rules would be few and far between. 489 U. S., at 313 (plurality opinion). And viewed in the context of this case, the majority's argument positively craters. For the majority today comes face-to-face with a rule that perfectly fits each of *Teague*'s criteria: Jury unanimity, as described in *Ramos*, is watershed—even though no prior rule was. See *supra*, at 297–302. That airtight match between *Ramos* and *Teague* refutes the majority's one stated reason for overruling the latter decision. The majority could not rely on the absence of watershed rules to topple *Teague* if it had just faithfully applied that decision to this case.

In choosing otherwise, the majority imposes a steep price for overruling *Apodaca* in *Ramos*. Taking with one hand what it gave with the other, the Court curtails *Ramos*'s effects by expunging *Teague*'s provision for watershed rules. And so too the Court limits the consequences of any similarly fundamental change in criminal procedure that may emerge in the future. For the first time in many decades (since long before *Teague*, see *supra*, at 297, n. 2), those convicted under rules found not to produce fair and reliable verdicts will be left without recourse in federal courts.[8]

I would not discard *Teague*'s watershed exception and so keep those unfairly convicted people from getting new trials. Instead, I would accept the consequences of last Term's holding in *Ramos*. A decision like that comes with a promise, or at any rate should. If the right to a unanimous jury is so

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[8] The majority's final claim is that it is properly immune from this criticism—that I cannot "turn around and impugn" its ruling—because "criminal defendants as a group are better off under *Ramos* and today's decision, taken together, than they would have been if [my] dissenting view had prevailed in *Ramos*." *Ante*, at 275. The suggestion is surprising. It treats judging as scorekeeping—and more, as scorekeeping about how much our decisions, or the aggregate of them, benefit a particular kind of party. I see the matter differently. Judges should take cases one at a time, and do their best in each to apply the relevant legal rules. And when judges err, others should point out where they went astray. No one gets to bank capital for future cases; no one's past decisions insulate them from criticism. The focus always is, or should be, getting the case before us right.

fundamental—if a verdict rendered by a divided jury is "no verdict at all"—then Thedrick Edwards should not spend his life behind bars over two jurors' opposition. I respectfully dissent.

Reporter's Note

The next page is purposely numbered 901. The numbers between 309 and 901 were intentionally omitted, in order to make it possible to publish the orders with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

ORDERS FOR APRIL 5 THROUGH
MAY 21, 2021

April 5, 2021

Certiorari Granted—Vacated and Remanded

No. 20–197. Biden, President of the United States, et al. *v.* Knight First Amendment Institute at Columbia University et al. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded with instructions to dismiss the case as moot. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950). Reported below: 928 F. 3d 226.

Justice Thomas, concurring.

When a person publishes a message on the social media platform Twitter, the platform by default enables others to republish (retweet) the message or respond (reply) to it or other replies in a designated comment thread. The user who generates the original message can manually "block" others from republishing or responding.

Donald Trump, then President of the United States, blocked several users from interacting with his Twitter account. They sued. The Second Circuit held that the comment threads were a "public forum" and that then-President Trump violated the First Amendment by using his control of the Twitter account to block the plaintiffs from accessing the comment threads. *Knight First Amdt. Inst. at Columbia Univ.* v. *Trump*, 928 F. 3d 226 (2019). But Mr. Trump, it turned out, had only limited control of the account; Twitter has permanently removed the account from the platform.

Because of the change in Presidential administration, the Court correctly vacates the Second Circuit's decision. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950). I write separately to note that this petition highlights the principal legal difficulty that surrounds digital platforms—namely, that applying old doctrines to new digital platforms is rarely straightforward. Respondents have a point, for example, that some aspects of

Mr. Trump's account resemble a constitutionally protected public forum. But it seems rather odd to say that something is a government forum when a private company has unrestricted authority to do away with it.

The disparity between Twitter's control and Mr. Trump's control is stark, to say the least. Mr. Trump blocked several people from interacting with his messages. Twitter barred Mr. Trump not only from interacting with a few users, but removed him from the entire platform, thus barring *all* Twitter users from interacting with his messages.[1] Under its terms of service, Twitter can remove any person from the platform—including the President of the United States—"at any time for any or no reason." Twitter Inc., User Agreement (effective June 18, 2020).

This is not the first or only case to raise issues about digital platforms. While this case involves a suit against a public official, the Court properly rejects today a separate petition alleging that digital platforms, not individuals on those platforms, violated public accommodations laws, the First Amendment, and antitrust laws. Pet. for Cert., O. T. 2020, No. 20–969. The petitions highlight two important facts. Today's digital platforms provide avenues for historically unprecedented amounts of speech, including speech by government actors. Also unprecedented, however, is the concentrated control of so much speech in the hands of a few private parties. We will soon have no choice but to address how our legal doctrines apply to highly concentrated, privately owned information infrastructure such as digital platforms.

I

On the surface, some aspects of Mr. Trump's Twitter account resembled a public forum. A designated public forum is "property that the State has opened for expressive activity by part or all of the public." *International Soc. for Krishna Consciousness, Inc.* v. *Lee,* 505 U. S. 672, 678 (1992). Mr. Trump often used the account to speak in his official capacity. And, as a governmental official, he chose to make the comment threads on his account publicly accessible, allowing any Twitter user—other than those whom he blocked—to respond to his posts.

Yet, the Second Circuit's conclusion that Mr. Trump's Twitter account was a public forum is in tension with, among other things,

[1] At the time, Mr. Trump's Twitter account had 89 million followers.

our frequent description of public forums as "government-controlled spaces." *Minnesota Voters Alliance* v. *Mansky,* 585 U. S. 1, 11 (2018); accord, *Pleasant Grove City* v. *Summum*, 555 U. S. 460, 469 (2009) ("government property and . . . government programs"); *Arkansas Ed. Television Comm'n* v. *Forbes*, 523 U. S. 666, 677 (1998) ("government properties"). Any control Mr. Trump exercised over the account greatly paled in comparison to Twitter's authority, dictated in its terms of service, to remove the account "at any time for any or no reason." Twitter exercised its authority to do exactly that.

Because unbridled control of the account resided in the hands of a private party, First Amendment doctrine may not have applied to respondents' complaint of stifled speech. See *Manhattan Community Access Corp.* v. *Halleck*, 587 U. S. 802, 812 (2019) (a "private entity is not ordinarily constrained by the First Amendment"). Whether governmental use of private space implicates the First Amendment often depends on the government's control over that space. For example, a government agency that leases a conference room in a hotel to hold a public hearing about a proposed regulation cannot kick participants out of the hotel simply because they express concerns about the new regulation. See *Southeastern Promotions, Ltd.* v. *Conrad*, 420 U. S. 546, 547, 555 (1975). But government officials who informally gather with constituents in a hotel bar can ask the hotel to remove a pesky patron who elbows into the gathering to loudly voice his views. The difference is that the government controls the space in the first scenario, the hotel, in the latter. Where, as here, private parties control the avenues for speech, our law has typically addressed concerns about stifled speech through other legal doctrines, which may have a secondary effect on the application of the First Amendment.

A

If part of the problem is private, concentrated control over online content and platforms available to the public, then part of the solution may be found in doctrines that limit the right of a private company to exclude. Historically, at least two legal doctrines limited a company's right to exclude.

First, our legal system and its British predecessor have long subjected certain businesses, known as common carriers, to special regulations, including a general requirement to serve all com-ers. Candeub, Bargaining for Free Speech: Common Carriage, Network Neutrality, and Section 230, 22 Yale J. L. & Tech. 391, 398–403 (2020) (Candeub); see also Burdick, The Origin of the Peculiar Duties of Public Service Companies, Pt. 1, 11 Colum. L. Rev. 514 (1911). Justifications for these regulations have varied. Some scholars have argued that common-carrier regulations are justified only when a carrier possesses substantial market power. Candeub 404. Others have said that no substantial market power is needed so long as the company holds itself out as open to the public. *Ibid.*; see also *Ingate* v. *Christie*, 3 Car. & K. 61, 63, 175 Eng. Rep. 463, 464 (N. P. 1850) ("[A] person [who] holds himself out to carry goods for everyone as a business . . . is a common carrier"). And this Court long ago suggested that regulations like those placed on common carriers may be justified, even for industries not historically recognized as common carriers, when "a business, by circumstances and its nature, . . . rise[s] from private to be of public concern." See *German Alliance Ins. Co.* v. *Lewis*, 233 U. S. 389, 411 (1914) (affirming state regulation of fire insurance rates). At that point, a company's "property is but its instrument, the means of rendering the service which has become of public interest." *Id.*, at 408.

This latter definition of course is hardly helpful, for most things can be described as "of public interest." But whatever may be said of other industries, there is clear historical precedent for regulating transportation and communications networks in a similar manner as traditional common carriers. Candeub 398–405. Telegraphs, for example, because they "resemble[d] railroad companies and other common carriers," were "bound to serve all customers alike, without discrimination." *Primrose* v. *Western Union Telegraph Co.*, 154 U. S. 1, 14 (1894).[2]

In exchange for regulating transportation and communication industries, governments—both State and Federal—have sometimes given common carriers special government favors. Candeub 402–407. For example, governments have tied restrictions on a carrier's ability to reject clients to "immunity from certain

[2] This Court has been inconsistent about whether telegraphs were common carriers. Compare *Primrose*, 154 U. S., at 14, with *Moore* v. *New York Cotton Exchange*, 270 U. S. 593, 605 (1926). But the Court has consistently recognized that telegraphs were at least analogous enough to common carriers to be regulated similarly. *Primrose*, 154 U. S., at 14.

types of suits"[3] or to regulations that make it more difficult for other companies to compete with the carrier (such as franchise licenses). *Ibid.* By giving these companies special privileges, governments place them into a category distinct from other companies and closer to some functions, like the postal service, that the State has traditionally undertaken.

Second, governments have limited a company's right to exclude when that company is a public accommodation. This concept—related to common-carrier law—applies to companies that hold themselves out to the public but do not "carry" freight, passengers, or communications. See, *e. g.*, *Civil Rights Cases*, 109 U. S. 3, 41–43 (1883) (Harlan, J., dissenting) (discussing places of public amusement). It also applies regardless of the company's market power. See, *e. g.*, 78 Stat. 243, 42 U. S. C. § 2000a(a).

B

Internet platforms of course have their own First Amendment interests, but regulations that might affect speech are valid if they would have been permissible at the time of the founding. See *United States* v. *Stevens*, 559 U. S. 460, 468 (2010). The long history in this country and in England of restricting the exclusion right of common carriers and places of public accommodation may save similar regulations today from triggering heightened scrutiny—especially where a restriction would not prohibit the company from speaking or force the company to endorse the speech. See *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 684 (1994) (O'Connor, J., concurring in part and dissenting in part); *PruneYard Shopping Center* v. *Robins*, 447 U. S. 74, 88 (1980). There is a fair argument that some digital platforms are sufficiently akin to common carriers or places of accommodation to be regulated in this manner.

1

In many ways, digital platforms that hold themselves out to the public resemble traditional common carriers. Though digital

[3] Telegraphs, for example, historically received some protection from defamation suits. Unlike other entities that might retransmit defamatory content, they were liable only if they knew or had reason to know that a message they distributed was defamatory. Restatement (Second) of Torts § 581 (1976); see also *O'Brien* v. *Western Union Tel. Co.*, 113 F. 2d 539, 542 (CA1 1940).

instead of physical, they are at bottom communications networks, and they "carry" information from one user to another. A traditional telephone company laid physical wires to create a network connecting people. Digital platforms lay information infrastructure that can be controlled in much the same way. And unlike newspapers, digital platforms hold themselves out as organizations that focus on distributing the speech of the broader public. Federal law dictates that companies cannot "be treated as the publisher or speaker" of information that they merely distribute. 110 Stat. 137, 47 U. S. C. § 230(c).

The analogy to common carriers is even clearer for digital platforms that have dominant market share. Similar to utilities, today's dominant digital platforms derive much of their value from network size. The Internet, of course, is a network. But these digital platforms are networks within that network. The Facebook suite of apps is valuable largely because 3 billion people use it. Google search—at 90% of the market share—is valuable relative to other search engines because more people use it, creating data that Google's algorithm uses to refine and improve search results. These network effects entrench these companies. Ordinarily, the astronomical profit margins of these platforms—last year, Google brought in $182.5 billion total, $40.3 billion in net income—would induce new entrants into the market. That these companies have no comparable competitors highlights that the industries may have substantial barriers to entry.

To be sure, much activity on the Internet derives value from network effects. But dominant digital platforms are different. Unlike decentralized digital spheres, such as the e-mail protocol, control of these networks is highly concentrated. Although both companies are public, one person controls Facebook (Mark Zuckerberg), and just two control Google (Larry Page and Sergey Brin). No small group of people controls e-mail.

Much like with a communications utility, this concentration gives some digital platforms enormous control over speech. When a user does not already know exactly where to find something on the Internet—and users rarely do—Google is the gatekeeper between that user and the speech of others 90% of the time. It can suppress content by deindexing or downlisting a search result or by steering users away from certain content by manually altering autocomplete results. Grind, Schechner, McMillan, & West, How Google Interferes With Its Search Algorithms and Changes Your Results, Wall Street Journal, Nov. 15, 2019. Facebook and Twitter can greatly narrow a person's information flow through similar means. And, as the distributor of the clear majority of e-books and about half of all physical books,[4] Amazon can impose cataclysmic consequences on authors by, among other things, blocking a listing.

It changes nothing that these platforms are not the sole means for distributing speech or information. A person always could choose to avoid the toll bridge or train and instead swim the Charles River or hike the Oregon Trail. But in assessing whether a company exercises substantial market power, what matters is whether the alternatives are comparable. For many of today's digital platforms, nothing is.

If the analogy between common carriers and digital platforms is correct, then an answer may arise for dissatisfied platform users who would appreciate not being blocked: laws that restrict the platform's right to exclude. When a platform's unilateral control is reduced, a government official's account begins to better resemble a "government-controlled spac[e]." *Mansky*, 585 U. S., at 11; see also *Southeastern Promotions*, 420 U. S., at 547, 555 (recognizing that a private space can become a public forum when leased to the government). Common-carrier regulations, although they directly restrain private companies, thus may have an indirect effect of subjecting government officials to suits that would not otherwise be cognizable under our public-forum jurisprudence.

This analysis may help explain the Second Circuit's intuition that part of Mr. Trump's Twitter account was a public forum. But that intuition has problems. First, if market power is a predicate for common carriers (as some scholars suggest), nothing in the record evaluates Twitter's market power. Second, and more problematic, neither the Second Circuit nor respondents have identified any regulation that restricts Twitter from removing an account that would otherwise be a "government-controlled space."

2

Even if digital platforms are not close enough to common carriers, legislatures might still be able to treat digital platforms like

[4] As of 2018, Amazon had 42% of the physical book market and 89% of the e-book market. Day & Gu, The Enormous Numbers Behind Amazon's Market Reach, Bloomberg, Mar. 27, 2019.

places of public accommodation. Although definitions between jurisdictions vary, a company ordinarily is a place of public accommodation if it provides "lodging, food, entertainment, or other services to the public . . . in general." Black's Law Dictionary 20 (11th ed. 2019) (defining "public accommodation"); accord, 42 U. S. C. § 2000a(b)(3) (covering places of "entertainment"). Twitter and other digital platforms bear resemblance to that definition. This, too, may explain the Second Circuit's intuition. Courts are split, however, about whether federal accommodations laws apply to anything other than "physical" locations. Compare, *e. g., Doe* v. *Mutual of Omaha Ins. Co.*, 179 F. 3d 557, 559 (CA7 1999) (Title III of the Americans with Disabilities Act (ADA) covers websites), with *Parker* v. *Metropolitan Life Ins. Co.*, 121 F. 3d 1006, 1010–1011 (CA6 1997) (en banc) (Title III of the ADA covers only physical places); see also 42 U. S. C. §§ 2000a(b)–(c) (discussing "physica[l] locat[ions]").

Once again, a doctrine, such as public accommodation, that reduces the power of a platform to unilaterally remove a government account might strengthen the argument that an account is truly government controlled and creates a public forum. See *Southeastern Promotions*, 420 U. S., at 547, 555. But no party has identified any public accommodation restriction that applies here.

II

The similarities between some digital platforms and common carriers or places of public accommodation may give legislators strong arguments for similarly regulating digital platforms. "[I]t stands to reason that if Congress may demand that telephone companies operate as common carriers, it can ask the same of" digital platforms. *Turner*, 512 U. S., at 684 (opinion of O'Connor, J.). That is especially true because the space constraints on digital platforms are practically nonexistent (unlike on cable companies), so a regulation restricting a digital platform's right to exclude might not appreciably impede the platform from speaking. See *id.*, at 675, 684 (noting restrictions on one-third of a cable company's channels but recognizing that regulation may still be justified); *PruneYard*, 447 U. S., at 88. Yet Congress does not appear to have passed these kinds of regulations. To the contrary, it has given digital platforms "immunity from certain types of suits," Candeub 403, with respect to content they distribute, 47 U. S. C. § 230, but it has not imposed corresponding responsibilities, like nondiscrimination, that would matter here.

None of this analysis means, however, that the First Amendment is irrelevant until a legislature imposes common carrier or public accommodation restrictions—only that the principal means for regulating digital platforms is through those methods. Some speech doctrines might still apply in limited circumstances, as this Court has recognized in the past.

For example, although a "private entity is not ordinarily constrained by the First Amendment," *Halleck*, 587 U. S., at 809, 812, it is if the government coerces or induces it to take action the government itself would not be permitted to do, such as censor expression of a lawful viewpoint. *Ibid.* Consider government threats. "People do not lightly disregard public officers' thinly veiled threats to institute criminal proceedings against them if they do not come around." *Bantam Books, Inc.* v. *Sullivan*, 372 U. S. 58, 68 (1963). The government cannot accomplish through threats of adverse government action what the Constitution prohibits it from doing directly. See *ibid.*; *Blum* v. *Yaretsky*, 457 U. S. 991, 1004–1005 (1982). Under this doctrine, plaintiffs might have colorable claims against a digital platform if it took adverse action against them in response to government threats.

But no threat is alleged here. What threats would cause a private choice by a digital platform to "be deemed . . . that of the State" remains unclear. *Id.*, at 1004.[5] And no party has

[5] Threats directed at digital platforms can be especially problematic in the light of 47 U. S. C. § 230, which some courts have misconstrued to give digital platforms immunity for bad-faith removal of third-party content. *Malwarebytes, Inc.* v. *Enigma Software Group USA, LLC*, 592 U. S. 1013, 1018–1019 (2020) (THOMAS, J., statement respecting denial of certiorari). This immunity eliminates the biggest deterrent—a private lawsuit—against caving to an unconstitutional government threat.

For similar reasons, some commentators have suggested that immunity provisions like § 230 could potentially violate the First Amendment to the extent those provisions pre-empt state laws that protect speech from private censorship. See Volokh, Might Federal Preemption of Speech-Protective State Laws Violate the First Amendment? The Volokh Conspiracy, Reason, Jan. 23, 2021. According to that argument, when a State creates a private right and a federal statute pre-empts that state law, "the federal statute is the source of the power and authority by which any private rights are lost sued Twitter. The question facing the courts below involved only whether a government actor violated the First Amendment by blocking another Twitter user. That issue turns, at least to some degree, on ownership and the right to exclude.

* * *

The Second Circuit feared that then-President Trump cut off speech by using the features that Twitter made available to him. But if the aim is to ensure that speech is not smothered, then the more glaring concern must perforce be the dominant digital platforms themselves. As Twitter made clear, the right to cut off speech lies most powerfully in the hands of private digital platforms. The extent to which that power matters for purposes of the First Amendment and the extent to which that power could lawfully be modified raise interesting and important questions. This petition, unfortunately, affords us no opportunity to confront them.

Certiorari Dismissed

No. 20–7266. Martin *v.* Capron et al. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Justice Barrett took no part in the consideration or decision of this motion and this petition.

No. 20–7267. Martin *v.* Capron et al. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Justice Barrett took no part in the consideration or decision of this motion and this petition.

Miscellaneous Orders

No. D–3074. In re Discipline of Morgan. Charles L. Morgan, Jr., of Charlotte, 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.

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or sacrificed." *Railway Employees* v. *Hanson*, 351 U. S. 225, 232 (1956); accord, *Skinner* v. *Railway Labor Executives' Assn.*, 489 U. S. 602, 614–615 (1989).

No. D–3075. In re Discipline of Hoffman. Mark A. Hoffman, of Lederach, Pa., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–3076. In re Discipline of Sardella. Albert Michael Sardella, of Coatesville, Pa., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–3077. In re Discipline of Adges. Michael Charles Adges, of Garden City, 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–3078. In re Discipline of Caro. Richard P. Caro, of Santa Rosa Beach, 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–3079. In re Discipline of Fasanaro. Michael F. Fasanaro, of Virginia Beach, 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–3080. In re Discipline of Kaufman. Kenneth Steven Kaufman, of Potomac, Md., 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. 20M67. Lynn *v.* Saul, Commissioner of Social Security. Motion for leave to file petition for writ of certiorari under seal denied.

No. 19–251. Americans for Prosperity Foundation *v.* Rodriquez, Acting Attorney General of California; and

No. 19–255. Thomas More Law Center *v.* Rodriquez, Acting Attorney General of California. C. A. 9th Cir. [Certiorari granted *sub nom.* in No. 19–251, *Americans for Prosperity Foundation* v. *Becerra*; in No. 19–255, *Thomas More Law Center* v. *Becerra*, 592 U. S. 1162.] Motion of petitioners for divided argument denied. Motion of petitioners for enlargement of time for oral argument, and motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted, and the time is allotted as follows: 30 minutes for petitioners, 10 minutes for the Acting Solicitor General, and 30 minutes for respondent.

No. 20–37. Becerra, Secretary of Health and Human Services, et al. *v.* Gresham et al.; and Becerra, Secretary of Health and Human Services, et al. *v.* Philbrick et al. C. A. D. C. Cir. [Certiorari granted *sub nom. Azar* v. *Gresham*; *Azar* v. *Philbrick*, 592 U. S. 1121.]; and

No. 20–38. Arkansas *v.* Gresham et al. C. A. D. C. Cir. [Certiorari granted, 592 U. S. 1121.] Upon consideration of the motion of petitioners to vacate the judgments of the Court of Appeals and remand, to remove the cases from the March 2021 argument calendar, and to hold further briefing in abeyance, these cases are held in abeyance pending further order of the Court.

No. 20–255. Mahanoy Area School District *v.* B. L., a Minor, By and Through Her Father, Levy, et al. C. A. 3d Cir. [Certiorari granted, 592 U. S. 1162.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 20–334. City of San Antonio, Texas, on Behalf of Itself and All Other Similarly Situated Texas Municipalities *v.* Hotels.com, L. P., et al. C. A. 5th Cir. [Certiorari granted, 592 U. S. 1162.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 20–440. Minerva Surgical, Inc. *v.* Hologic, Inc., et al. C. A. Fed. Cir. [Certiorari granted, 592 U. S. 1162.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument 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 the Acting Solicitor General for divided argument granted.

No. 20–772. Waterfront Commission of New York Harbor *v.* Murphy, Governor of New Jersey, et al. C. A. 3d Cir.; and

No. 20–1034. Golan *v.* Saada. C. A. 2d Cir. The Acting Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 20–5904. Terry *v.* United States. C. A. 11th Cir. [Certiorari granted, 592 U. S. 1163.] Motions of the Acting Solicitor General for leave to file a brief out of time and for divided argument granted.

No. 20–1052. In re Baylor;

No. 20–7013. In re Windsor; and

No. 20–7346. In re Diehl. Petitions for writs of mandamus denied.

Certiorari Granted

No. 20–826. Brown, Acting Warden *v.* Davenport. C. A. 6th Cir. Certiorari granted. Reported below: 964 F. 3d 448.

Certiorari Denied

No. 19–1461. Dalberiste *v.* GLE Associates, Inc. C. A. 11th Cir. Certiorari denied.

No. 20–83. Jones et al. *v.* Kalbaugh. C. A. 10th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 826.

No. 20–551. Voris *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 964 F. 3d 864.

No. 20–753. Confederated Tribes and Bands of the Yakama Nation *v.* Yakima County, Washington, et al. C. A. 9th Cir. Certiorari denied. Reported below: 963 F. 3d 982.

No. 20–872. Davis *v.* Carroll et al. C. A. 11th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 958.

No. 20–952. Construction Cost Data, L. L. C., et al. *v.* Gordian Group, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 814 Fed. Appx. 860.

No. 20–969. Freedom Watch, Inc., et al. *v.* Google Inc. et al. C. A. D. C. Cir. Certiorari denied. Reported below: 816 Fed. Appx. 497.

No. 20–1015. Ortiz *v.* Walsh. Ct. Sp. App. Md. Certiorari denied. Reported below: 246 Md. App. 779 and 790.

No. 20–1020. Okoro *v.* Texas. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 20–1024. Young *v.* Edelen et al. Sup. Ct. Ky. Certiorari denied.

No. 20–1025. Francisco Vega *v.* Moody, Attorney General of Florida, et al. C. A. 11th Cir. Certiorari denied.

No. 20–1037. Bowling *v.* Roach. C. A. 5th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 901.

No. 20–1064. Jones *v.* U. S. Bank N. A., as Trustee for Residential Asset Securities Corp., et al. C. A. 3d Cir. Certiorari denied. Reported below: 828 Fed. Appx. 127.

No. 20–1068. Shophar *v.* Johnson County, Kansas, et al. Sup. Ct. Kan. Certiorari denied.

No. 20–1073. Doe et al. *v.* Haaland et al. C. A. 6th Cir. Certiorari denied. Reported below: 973 F. 3d 591.

No. 20–1108. Pontiler S. A. *v.* OPI Products Inc. et al. C. A. 9th Cir. Certiorari denied. Reported below: 824 Fed. Appx. 523.

No. 20–1135. Jones et al. *v.* Lafferty et al. Sup. Ct. Conn. Certiorari denied. Reported below: 336 Conn. 332, 246 A. 3d 429.

No. 20–1139. Jones *v.* McDonough, Secretary of Veterans Affairs. C. A. Fed. Cir. Certiorari denied. Reported below: 964 F. 3d 1374.

No. 20–1153. Devine *v.* Absolute Activist Value Master Fund Ltd. et al. C. A. 11th Cir. Certiorari denied. Reported below: 826 Fed. Appx. 876.

No. 20–1164. Boyd *v.* Johnson, Administrator, New Jersey State Prison, et al. C. A. 3d Cir. Certiorari denied. Reported below: 824 Fed. Appx. 111.

No. 20–1189. Hardin *v.* Indiana. Sup. Ct. Ind. Certiorari denied. Reported below: 148 N. E. 3d 932.

No. 20–1191. Singletary *v.* Nelsen, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 195.

No. 20–1211. SynKloud Technologies, LLC *v.* Adobe, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 823 Fed. Appx. 929.

No. 20–1222. Dalessio *v.* University of Washington et al. C. A. 9th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 121.

No. 20–1228. Jaye *v.* United States District Court for the Northern District of Iowa. C. A. 8th Cir. Certiorari denied.

No. 20–1232. IBSA Institut Biochimique, S. A., et al. *v.* Teva Pharmaceuticals USA, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 966 F. 3d 1374.

No. 20–1249. Dubin *v.* Office of Disciplinary Counsel. Sup. Ct. Haw. Certiorari denied.

No. 20–6294. Sealey *v.* Ford, Warden. C. A. 11th Cir. Certiorari denied. Reported below: 954 F. 3d 1338.

No. 20–6507. Berry et al. *v.* Wells Fargo Bank, N. A., et al. C. A. 5th Cir. Certiorari denied.

No. 20–6604. Grant *v.* City of Roanoke, Virginia. C. A. 4th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 236.

No. 20–6891. Knight *v.* Florida Department of Corrections et al. C. A. 11th Cir. Certiorari denied. Reported below: 958 F. 3d 1035.

No. 20–6899. Hudson *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 20–6965. Miller *v.* Dunn. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 20–6970. Maxwell *v.* Ohio. Ct. App. Ohio, 8th App. Dist., Cuyahoga County. Certiorari denied. Reported below: 2020-Ohio-3027.

No. 20–6990. Smith *v.* Arizona. Sup. Ct. Ariz. Certiorari denied. Reported below: 250 Ariz. 69, 475 P. 3d 558.

No. 20–7003. Kudla *v.* Minnesota. Ct. App. Minn. Certiorari denied.

No. 20–7011. Saisi *v.* Murray et al. C. A. 3d Cir. Certiorari denied. Reported below: 822 Fed. Appx. 47.

No. 20–7014. Bruzzone *v.* Intel Corp. et al. C. A. 9th Cir. Certiorari denied.

No. 20–7016. Bruins *v.* Whitman, Associate Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 20–7017. Beyer *v.* Texas. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 20–7022. Reyes Trujillo *v.* Houston, Acting Warden. C. A. 9th Cir. Certiorari denied.

No. 20–7023. Parker *v.* Apple Inc. C. A. Fed. Cir. Certiorari denied.

No. 20–7027. Kynast *v.* Florida. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 308 So. 3d 109.

No. 20–7074. Nave *v.* Vanihel, Warden. C. A. 7th Cir. Certiorari denied.

No. 20–7097. Sweat *v.* City of Las Cruces, New Mexico, et al. Sup. Ct. N. M. Certiorari denied.

No. 20–7098. Nicolas Reyes *v.* Georgia. Sup. Ct. Ga. Certiorari denied. Reported below: 309 Ga. 660, 847 S. E. 2d 194.

No. 20–7105. Harris *v.* University of Arizona Police Department et al. C. A. 9th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 196.

No. 20–7127. Pontefract *v.* United States et al. C. A. 6th Cir. Certiorari denied.

No. 20–7133. Reed *v.* Payne, Director, Arkansas Division of Correction. C. A. 8th Cir. Certiorari denied.

No. 20–7134. Shuhaiber *v.* Illinois Department of Corrections. C. A. 7th Cir. Certiorari denied. Reported below: 980 F. 3d 1167.

No. 20–7136. Stanford *v.* Paramo, Warden. C. A. 9th Cir. Certiorari denied.

No. 20–7152. Hook *v.* Indiana. Ct. App. Ind. Certiorari denied. Reported below: 150 N. E. 3d 1102.

No. 20–7169. Nunley *v.* Brown. C. A. 7th Cir. Certiorari denied.

No. 20–7172. Constantin *v.* Florida. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 301 So. 3d 449.

No. 20–7173. Depaula *v.* Florida. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 302 So. 3d 835.

No. 20–7175. Elkins *v.* Guinn et al. C. A. 7th Cir. Certiorari denied.

No. 20–7257. Knox *v.* Magera et al. C. A. 4th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 111.

No. 20–7265. Lindsey *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 2020 IL 124289, 181 N. E. 3d 1.

No. 20–7288. Cam *v.* Oregon. Ct. App. Ore. Certiorari denied.

No. 20–7306. Madrid *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 282.

No. 20–7319. Johnson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 199.

No. 20–7322. Coffee *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 20–7324. Traywicks *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 827 Fed. Appx. 889.

No. 20–7325. Todd *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 313.

No. 20–7333. Martinez *v.* Warden, Federal Correctional Institution Coleman-Low. C. A. 11th Cir. Certiorari denied.

No. 20–7336. Tillman *v.* Florida. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 247 So. 3d 523.

No. 20–7340. Welshans *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 803 Fed. Appx. 626.

No. 20–7362. Braye *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 828 Fed. Appx. 653.

No. 20–7363. Butler *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 828 Fed. Appx. 602.

No. 20–7365. Brount, aka Brunt *v.* Frosh, Attorney General of Maryland. C. A. 4th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 239.

No. 20–7369. Hickmon *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 824 Fed. Appx. 302.

No. 20–7381. Wilkerson *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 966 F. 3d 828.

No. 20–7383. Zamora-Suarez, aka Moncada *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 20–7385. Kaetz *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 20–7388. De La Torre *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 306.

No. 20–7389. Udoh *v.* Dooley, Warden. C. A. 8th Cir. Certiorari denied.

No. 20–7390. Udoh *v.* Knutson, Warden. C. A. 8th Cir. Certiorari denied.

No. 20–7393. Coleman *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 20–7398. Jokhoo *v.* Velaquez-Aguilu, Assistant United States Attorney. C. A. 4th Cir. Certiorari denied. Reported below: 824 Fed. Appx. 187.

No. 20–7399. Clancy *v.* Austin, Secretary of Defense. C. A. 10th Cir. Certiorari denied. Reported below: 837 Fed. Appx. 630.

No. 20–7402. Brownridge *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 20–7412. Gardner *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 20–7416. Herman *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 828 Fed. Appx. 894.

No. 20–7422. Little *v.* Cromwell. C. A. 7th Cir. Certiorari denied.

No. 20–7423. Cruz *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 977 F. 3d 998.

No. 20–7425. Craig *v.* Matevousian, Warden. C. A. 6th Cir. Certiorari denied.

No. 20–7430. Torres *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 834 Fed. Appx. 382.

No. 19–1388. Small *v.* Memphis Light, Gas and Water. C. A. 6th Cir. Certiorari denied. Reported below: 952 F. 3d 821.

Justice Gorsuch, with whom Justice Alito joins, dissenting.

For over a decade, Jason Small worked as an electrician at Memphis Light, Gas & Water. Then an on-the-job injury forced him into a new role as a dispatcher. This job came with a different schedule and mandatory overtime duties. Sometimes the new hours conflicted with Mr. Small's religious obligations, like worship services on Sunday mornings. So Mr. Small asked his employer to place him on reduced pay temporarily while he sought reassignment to a different position with a more conducive schedule. The company had a history of offering this same accommodation to other employees, including those removed from their positions for unsatisfactory job performance. But when it came to Mr. Small, the company balked.

That left Mr. Small to make the dispatcher role work as best he could. For a period, things went smoothly enough. Mr. Small even used his vacation days when necessary to attend church. Eventually, though, a problem arose. Mr. Small asked to use some of his vacation time on Good Friday. At first, the company agreed. Then it backtracked, canceling his vacation request. When Mr. Small went to church anyway, the company suspended him for two days without pay.

In response, Mr. Small filed suit seeking a ruling that the company's conduct violated Title VII. That federal statute prohibits discrimination on the basis of race, color, religion, sex, and national origin, and requires employers to afford requested religious accommodations unless doing so would impose an "undue hardship" on them. 78 Stat. 253, 255, as amended, 86 Stat. 103, 42 U. S. C. §§ 2000e(j), 2000e–2(a). At no point in the litigation did anyone suggest that Mr. Small's requested accommodation—reduced pay while he sought reassignment—would have imposed a significant hardship on his employer. Yet both the district court and Sixth Circuit rejected Mr. Small's claim all the same.

The courts explained that *Trans World Airlines, Inc.* v. *Hardison*, 432 U. S. 63 (1977), tied their hands. There, this Court dramatically revised—really, undid—Title VII's undue hardship test. *Hardison* held that an employer does not need to provide a religious accommodation that involves "more than a *de minimis* cost." *Id.*, at 84. So Mr. Small's requested accommodation might not have imposed a significant hardship on his employer. The company may extend poorly performing employees the very same relief Mr. Small sought. But the company had no obligation to provide Mr. Small his requested accommodation because doing so would have cost the company something (anything) more than a trivial amount. See *Small* v. *Memphis Light, Gas & Water*, 952 F. 3d 821, 825 (CA6 2020) (*per curiam*).

Now, Mr. Small asks us to hear his case and I would grant his petition for review. *Hardison*'s *de minimis* cost test does not appear in the statute. The Court announced that standard in a single sentence with little explanation or supporting analysis. Neither party before the Court had even argued for the rule. *Patterson* v. *Walgreen Co.*, 589 U. S. 1229 (2020) (ALITO, J., concurring in denial of certiorari). Justice Marshall highlighted all these problems at the time, noting in dissent that the *de minimis* cost test cannot be reconciled with the "plain words" of Title VII, defies "simple English usage," and "effectively nullif[ies]" the statute's promise. *Hardison*, 432 U. S., at 88, 89, 93, n. 6 (Marshall, J., dissenting).

Nor has time been kind to *Hardison*. In the intervening years, Congress has adopted additional civil rights laws using the "undue hardship" standard. And when applying each of those laws, courts are far more demanding. The Americans with Disabilities Act of 1990 (ADA) requires a covered employer to accommodate an employee's "known physical or mental limitations" unless doing so would impose an "undue hardship." 104 Stat. 332, 42 U. S. C.

§ 12112(b)(5)(A). The Uniformed Services Employment and Reemployment Rights Act (USERRA) obliges an employer to restore a returning United States service member to his prior role unless doing so would cause an "undue hardship." 38 U. S. C. §§ 4303(10), 4313(a)(1)(B), (a)(2)(B). And the Affordable Care Act (ACA) provides that a covered employer must provide a nursing mother with work breaks unless doing so would impose an "undue hardship." 124 Stat. 577, 29 U. S. C. § 207(r)(3). Under all three statutes, an employer must provide an accommodation unless doing so would impose "significant difficulty or expense" in light of the employer's financial resources, the number of individuals it employs, and the nature of its operations and facilities. See ADA, 42 U. S. C. § 12111(10)(A) (added 1990); USERRA, 38 U. S. C. § 4303(15) (added 1994); ACA, 29 U. S. C. § 207(r)(3) (added 2010); cf. 11 U. S. C. § 523(a)(8); 28 U. S. C. § 1869(j).

With these developments, Title VII's right to religious exercise has become the odd man out. Alone among comparable statutorily protected civil rights, an employer may dispense with it nearly at whim. As this case illustrates, even subpar employees may wind up receiving more favorable treatment than highly performing employees who seek only to attend church. And the anomalies do not end there. Under the ADA, an employer may be required to alter the snack break schedule for a diabetic employee because doing so would not pose an undue hardship. *Spiteri* v. *AT & T Holdings, Inc.*, 40 F. Supp. 3d 869, 878 (ED Mich. 2014). Yet, thanks to *Hardison*, at least one court has held that it would be an undue hardship to require an employer to shift a meal break for Muslim employees during Ramadan. *EEOC* v. *JBS USA, LLC*, 339 F. Supp. 3d 1135, 1181 (Colo. 2018). With *Hardison*, uneven results like these have become increasingly commonplace. See Brief for Muslim Advocates et al. as *Amici Curiae* 21–22 (collecting examples).

Not even Mr. Small's employer tries to defend this state of affairs. The company candidly acknowledges that *Hardison* "very likely is not the best possible gloss" on Title VII's language. Brief in Opposition 23. Two of the three judges on the panel below agreed, writing separately to explain their view that *Hardison* "rewr[o]te [the] statute." *Small*, 952 F. 3d, at 826–829 (Thapar, J., joined by Kethledge, J., concurring). Yet, today, this Court refuses even to entertain the question. It's a struggle to see why.

Maybe the most charitable explanation for the Court's inaction has to do with issue preservation. But if that's the worry, there is no reason for it. Both the district court and the court of appeals expressly passed on the question whether Mr. Small's employer violated Title VII by denying his requested accommodation. That is all our precedent demands. *United States* v. *Williams*, 504 U. S. 36, 41–43 (1992). The district court ruled that "placing Mr. Small back in the reassignment pool on reduced pay to wait for a job with hours more in line with [his] religious obligations would . . . place more than a de minimis burden on" the company. App. to Pet. for Cert. 35a. For that reason, the court said, the company "sufficiently satisfied its obligation to demonstrate [an] undue hardship." *Ibid.* While two members of the Sixth Circuit panel assigned to Mr. Small's case doubted *Hardison*, none doubted what it required. Because his requested accommodation involved "more than [a] de minimis" cost, the court held, the company didn't have to provide it. *Small*, 952 F. 3d, at 825 (*per curiam*) (citing circuit precedent following *Hardison*).

I cannot see what more we could reasonably require. Mr. Small insisted that his requested accommodation would not cause an undue hardship under Title VII. Both the district court and court of appeals rejected the argument relying expressly on *Hardison*. There is no barrier to our review and no one else to blame. The only mistake here is of the Court's own making—and it is past time for the Court to correct it.

No. 20–733. Rickmon *v.* United States. C. A. 7th Cir. Certiorari denied. Justice Barrett took no part in the consideration or decision of this petition. Reported below: 952 F. 3d 876.

No. 20–1018. Louisiana Real Estate Appraisers Board *v.* Federal Trade Commission. C. A. 5th Cir. Motion of Federation of State Medical Boards for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 976 F. 3d 597.

No. 20–1067. Rosas *v.* Advocate Health & Hospitals Corp., dba Advocate Christ Medical Center, et al. C. A. 7th Cir. Certiorari denied. Justice Barrett took no part in the consideration or decision of this petition. Reported below: 803 Fed. Appx. 952.

No. 20–1134. Myers *v.* Neal, Superintendent, Indiana State Prison. C. A. 7th Cir. Certiorari denied. Justice Barrett took no part in the consideration or decision of this petition. Reported below: 975 F. 3d 611.

No. 20–7015. Burton *v.* Board of Regents of the University of Wisconsin System et al. C. A. 7th Cir. Certiorari denied. Justice Barrett took no part in the consideration or decision of this petition. Reported below: 818 Fed. Appx. 564.

Rehearing Denied

No. 20–6263. Abdulrazzak *v.* Fluke, Warden, et al., 592 U. S. 1185. Petition for rehearing denied.

April 8, 2021

Miscellaneous Order

No. 20A126. Reeves, Governor of Mississippi, et al. *v.* Williams, on Behalf of Her Minor Child J. E., et al. Application to recall and stay the mandate of the United States Court of Appeals for the Fifth Circuit, presented to Justice Alito, and by him referred to the Court, denied without prejudice to a renewed application after the remaining grounds for dismissal currently on remand to the District Court have been fully resolved.

April 14, 2021

Miscellaneous Orders. (For the Court's orders prescribing amendments to the Federal Rules of Appellate Procedure, see 593 U. S. 1055; and amendments to the Federal Rules of Bankruptcy Procedure, see 593 U. S. 1065.

April 16, 2021

Miscellaneous Orders

No. 19–1039. PennEast Pipeline Co., LLC *v.* New Jersey et al. C. A. 3d Cir. [Certiorari granted, 592 U. S. 1243.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 20–543. Yellen, Secretary of the Treasury *v.* Confederated Tribes of the Chehalis Reservation et al. C. A. D. C. Cir. [Certiorari granted *sub nom. Mnuchin* v. *Confederated Tribes of the Chehalis Reservation*, 592 U. S. 1163]; and

No. 20–544. Alaska Native Village Corp. Assn., Inc., et al. *v.* Confederated Tribes of the Chehalis Reservation et al. C. A. D. C. Cir. [Certiorari granted, 592 U. S. 1163.] Motion of the Acting Solicitor General for divided argument granted. Motion of Ute Indian Tribe of the Uintah and Ouray Reservation for divided argument denied.

April 19, 2021

Certiorari Granted—Vacated and Remanded

No. 20–308. La Boom Disco, Inc. *v.* Duran. C. A. 2d Cir. Reported below: 955 F. 3d 279; and

No. 20–723. Pennsylvania Higher Education Assistance Agency *v.* Allan et al. C. A. 6th Cir. Reported below: 968 F. 3d 567. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Facebook, Inc.* v. *Duguid*, 592 U. S. 395 (2021).

No. 20–740. Bognet et al. *v.* Degraffenreid, Acting Secretary of Pennsylvania, et al. C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded with instructions to dismiss the case as moot. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950). Reported below: 980 F. 3d 336.

Certiorari Dismissed

No. 20–7025. Allen *v.* Hudson. 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. 234.

No. 20–7067. Pennington-Thurman *v.* Sansone Group DDR LLC. Ct. App. Mo., Eastern Dist. 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: 613 S. W. 3d 424.

No. 20–7092. Watford *v.* Pfister et al. (Reported below: 811 Fed. Appx. 374); and Watford *v.* Jeffreys et al. (829 Fed.

Appx. 132). C. A. 7th 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*). Justice Barrett took no part in the consideration or decision of this motion and this petition.

Miscellaneous Orders

No. 20M68. Hutchinson *v.* United States. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 20–609. Gannett Co., Inc., et al. *v.* Quatrone. C. A. 4th Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 20–6366. Riley *v.* Delaware. Sup. Ct. Del. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [592 U. S. 1165] denied. Justice Alito took no part in the consideration or decision of this motion.

No. 20–7116. Del Pino Allen *v.* Board of Trustees of Miami Dade College. Dist. Ct. App. Fla., 3d Dist.;

No. 20–7162. Aguilar et al. *v.* Specialized Loan Servicing, LLC, et al. C. A. 9th Cir.; and

No. 20–7234. Barrett *v.* PAE Government Services, Inc., et al. C. A. 4th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until May 10, 2021, within which to pay the docketing fees required by this Court's Rule 38(a).

No. 20–1282. In re Dery;

No. 20–1304. In re Tweed;

No. 20–1342. In re Radcliff;

No. 20–7575. In re Robinson; and

No. 20–7584. In re Graham. Petitions for writs of habeas corpus denied.

No. 20–7517. In re Smith. 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. 20–1230. In re Sydnor;
No. 20–1290. In re Ogunjobi;
No. 20–7045. In re Brooks; and
No. 20–7510. In re English. Petitions for writs of mandamus denied.

No. 20–1112. In re Arunachalam. Petition for writ of mandamus denied. The Chief Justice took no part in the consideration or decision of this petition.

No. 20–7170. In re Prasad. Petition for writ of mandamus denied. Justice Breyer took no part in the consideration or decision of this petition.

Certiorari Granted

No. 20–637. Hemphill *v.* New York. Ct. App. N. Y. Certiorari granted. Reported below: 35 N. Y. 3d 1035, 150 N. E. 3d 356.

Certiorari Denied

No. 20–418. Glasser *v.* Hilton Grand Vacations Co., LLC. C. A. 11th Cir. Certiorari denied. Reported below: 948 F. 3d 1301.

No. 20–479. Shinn *v.* Baker. C. A. 9th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 137.

No. 20–674. Uzodinma *v.* Garland, Attorney General. C. A. 8th Cir. Certiorari denied. Reported below: 951 F. 3d 960.

No. 20–768. Serrano *v.* United States Customs and Border Protection et al. C. A. 5th Cir. Certiorari denied. Reported below: 975 F. 3d 488.

No. 20–782. Holloway *v.* Garland, Attorney General, et al. C. A. 3d Cir. Certiorari denied. Reported below: 948 F. 3d 164.

No. 20–812. Folajtar *v.* Garland, Attorney General, et al. C. A. 3d Cir. Certiorari denied. Reported below: 980 F. 3d 897.

No. 20–877. King *v.* Pridmore et al. C. A. 11th Cir. Certiorari denied. Reported below: 961 F. 3d 1135.

No. 20–941. Atkins et al. *v.* Williams, Medical Director, Tennessee Department of Correction. C. A. 6th Cir. Certiorari denied. Reported below: 972 S. W. 3d 734.

No. 20–948. Kobe *v.* Buscemi et al. C. A. 4th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 180.

No. 20–963. Walton *v.* Virginia International Terminals, LLC. Sup. Ct. Va. Certiorari denied.

No. 20–975. Owens *v.* Stirling, Director, South Carolina Department of Corrections, et al. C. A. 4th Cir. Certiorari denied. Reported below: 967 F. 3d 396.

No. 20–1054. Valambhia et al. *v.* United Republic of Tanzania et al. C. A. D. C. Cir. Certiorari denied. Reported below: 964 F. 3d 1135.

No. 20–1071. West Virginia ex rel. Yurish et al. *v.* Faircloth, Judge, Circuit Court of West Virginia, 23d Judicial Circuit, et al. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 243 W. Va. 537, 847 S. E. 2d 810.

No. 20–1072. Thompson et al. *v.* DeWine, Governor of Ohio, et al. C. A. 6th Cir. Certiorari denied. Reported below: 976 F. 3d 610.

No. 20–1074. Linsangan *v.* Taijeron et al. C. A. 9th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 527.

No. 20–1075. Reichard et al. *v.* Brown, Chapter 13 Trustee. C. A. 9th Cir. Certiorari denied. Reported below: 829 Fed. Appx. 812.

No. 20–1076. SE Property Holdings, LLC, as Successor by Merger to Vision Bank *v.* Gaddy. C. A. 11th Cir. Certiorari denied. Reported below: 977 F. 3d 1051.

No. 20–1082. Gardner *v.* Mglej. C. A. 10th Cir. Certiorari denied. Reported below: 974 F. 3d 1151.

No. 20–1085. Stafne *v.* Zilly, Judge, United States District Court for the Western District of Washington, et al. C. A. 9th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 594.

No. 20–1091. Schulz *v.* Town Board of the Town of Queensbury et al. Ct. App. N. Y. Certiorari denied. Reported below: 24 N. Y. 3d 1177, 146 N. E. 3d 528.

No. 20–1096. Fetner *v.* Hotel Street Capital, LLC, et al. C. A. 4th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 866.

No. 20–1097. Han *v.* Yangrai Cho. C. A. 9th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 864.

No. 20–1098. Houthoofd *v.* Parish, Warden. Ct. App. Mich. Certiorari denied.

No. 20–1102. Hanna *v.* Little League Baseball, Inc. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied. Reported below: 53 Cal. App. 5th 871, 267 Cal. Rptr. 3d 845.

No. 20–1104. Tesoriero *v.* Carnival Corp., dba Carnival Cruise Line. C. A. 11th Cir. Certiorari denied. Reported below: 965 F. 3d 1170.

No. 20–1115. Granton *v.* Washington State Lottery. C. A. 9th Cir. Certiorari denied.

No. 20–1117. Fetner *v.* Wilmington Savings Fund Society et al. (Reported below: 801 Fed. Appx. 188); and Fetner *v.* Hotel Street Capital, LLC, et al. (801 Fed. Appx. 189). C. A. 4th Cir. Certiorari denied.

No. 20–1118. Grundstein *v.* Lamoille Superior Docket Entries/Orders et al. C. A. 2d Cir. Certiorari denied. Reported below: 821 Fed. Appx. 46.

No. 20–1122. Fleury *v.* Massachusetts. App. Ct. Mass. Certiorari denied. Reported below: 97 Mass. App. 1123, 147 N. E. 3d 1113.

No. 20–1124. Leatherwood *v.* Braggs, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 829 Fed. Appx. 363.

No. 20–1126. Santos Martillo et al. *v.* Unknown Defendants. App. Ct. Mass. Certiorari denied. Reported below: 97 Mass. App. 1120, 145 N. E. 3d 918.

No. 20–1133. Triantos *v.* Deutsche Bank National Trust Co., as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2004–HE4, Mortgage Pass-Through Certificates, Series 2004–HE4, et al. C. A. 1st Cir. Certiorari denied.

No. 20–1136. Capote *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied.

No. 20–1140. DeBose *v.* University of South Florida Board of Trustees et al. C. A. 11th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 547.

No. 20–1155. Nelson *v.* Minnesota. Sup. Ct. Minn. Certiorari denied. Reported below: 947 N. W. 2d 31.

No. 20–1160. West Ventures L. P., fka Sleiman Ventures, L. P., et al. *v.* Commissioner of Internal Revenue. C. A. 9th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 428.

No. 20–1166. Shophar et ux. *v.* United States et al. C. A. 10th Cir. Certiorari denied. Reported below: 838 Fed. Appx. 328.

No. 20–1178. Pacific Choice Seafood Co. et al. *v.* Raimondo, Secretary of Commerce, et al. C. A. 9th Cir. Certiorari denied. Reported below: 976 F. 3d 932.

No. 20–1182. Tapia-Felix *v.* Garland, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 827 Fed. Appx. 691.

No. 20–1225. Winston et al. *v.* Walsh. C. A. 11th Cir. Certiorari denied. Reported below: 829 Fed. Appx. 448.

No. 20–1237. Brown *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 823 Fed. Appx. 97.

No. 20–1239. Smith *v.* Ohio. Ct. App. Ohio, 1st App. Dist., Hamilton County. Certiorari denied.

No. 20–1260. Castillo, aka Moreno Velasquez *v.* Garland, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 831 Fed. Appx. 795.

No. 20–1269. Renfroe et al. *v.* Parker et al. C. A. 5th Cir. Certiorari denied. Reported below: 974 F. 3d 594.

No. 20–1270. Stafne *v.* Bank of New York Mellon. C. A. 9th Cir. Certiorari denied. Reported below: 824 Fed. Appx. 536.

No. 20–1274. Wern *v.* South Carolina Commission on Lawyer Conduct. Sup. Ct. S. C. Certiorari denied. Reported below: 431 S. C. 643, 849 S. E. 2d 898.

No. 20–1280. Cotropia *v.* Chapman. C. A. 5th Cir. Certiorari denied. Reported below: 978 F. 3d 282.

No. 20–1281. Dredd *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 833 Fed. Appx. 79.

No. 20–1283. Temponeras *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 828 Fed. Appx. 320.

No. 20–1289. NetScout Systems, Inc., et al. *v.* Packet Intelligence LLC. C. A. Fed. Cir. Certiorari denied. Reported below: 965 F. 3d 1299.

No. 20–1300. Torres Luque, et al. *v.* Commissioner of Internal Revenue. C. A. 9th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 395.

No. 20–1301. McNeil *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 515.

No. 20–1314. Richardson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 225.

No. 20–1319. Manuel Solorzano *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 832 Fed. Appx. 276.

No. 20–1321. Lee *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 20–6054. Tribue *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 929 F. 3d 1326.

No. 20–6260. Johnson *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 954 F. 3d 1106.

No. 20–6498. Barksdale *v.* Dunn, Commissioner, Alabama Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 20–6563. Stallworth *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 179.

No. 20–6599. Dominguez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 244.

No. 20–6640. Perryman *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 965 F. 3d 424.

No. 20–6754. Tarpley *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 976.

No. 20–6773. Smith *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 981.

No. 20–6780. Aguilar *v.* Specialized Loan Servicing, LLC, et al. Ct. App. Cal., 2d App. Dist., Div. 1. Certiorari denied.

No. 20–6791. Penn *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 969 F. 3d 450.

No. 20–6871. Green *v.* New York. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 179 App. Div. 3d 1516, 118 N. Y. S. 3d 853.

No. 20–7038. Martinez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 396.

No. 20–7051. Zavalidroga *v.* United States District Court for the Northern District of New York. C. A. 2d Cir. Certiorari denied.

No. 20–7053. Manuel Torres *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 20–7056. Mehdipour *v.* Coyle, Judge, et al. Sup. Ct. Okla. Certiorari denied.

No. 20–7060. Mosier *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 20–7061. Tomlin *v.* Ishee. C. A. 4th Cir. Certiorari denied. Reported below: 830 Fed. Appx. 111.

No. 20–7075. Parnell *v.* Chen et al. (Reported below: 824 Fed. Appx. 891); and Parnell *v.* Martinez et al. (821 Fed. Appx. 866). C. A. 9th Cir. Certiorari denied.

No. 20–7084. Hill *v.* Google LLC et al. Ct. App. D. C. Certiorari denied. Reported below: 244 A. 3d 211.

No. 20–7093. Turner *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 20–7104. Badkin *v.* Lockheed Corp. et al. C. A. 9th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 617.

No. 20–7111. Lopez-Vanegas *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 227 A. 3d 413.

No. 20–7117. Troy-McKoy *v.* Mount Sinai Beth Israel. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 182 App. Div. 3d 524, 123 N. Y. S. 3d 111.

No. 20–7123. Heddlesten *v.* Crow, Director, Oklahoma Department of Corrections. C. A. 10th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 663.

No. 20–7131. Elkins *v.* Shoop, Warden. C. A. 6th Cir. Certiorari denied.

No. 20–7139. Anderson *v.* Colorado. Ct. App. Colo. Certiorari denied.

No. 20–7143. Heyangjing Shi et al. *v.* Mash. Ct. App. N. Y. Certiorari denied. Reported below: 35 N. Y. 3d 949, 147 N. E. 3d 1154.

No. 20–7144. Xue Jie He *v.* Hairong Xue. Ct. App. N. Y. Certiorari denied. Reported below: 35 N. Y. 3d 967, 147 N. E. 3d 1165.

No. 20–7145. Harris *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 964 F. 3d 718.

No. 20–7147. Angel Acosta *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 20–7149. Gaddy *v.* Ducart, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 300.

No. 20–7151. Hejazi *v.* Harrold, Sheriff, Lane County, Oregon. C. A. 9th Cir. Certiorari denied.

No. 20–7153. Forbes *v.* SeaWorld Entertainment, Inc., et al. C. A. 4th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 847.

No. 20–7155. Scott *v.* Robinson, Warden (two judgments). C. A. 6th Cir. Certiorari denied.

No. 20–7158. Ramirez *v.* Inch, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 20–7159. Smith *v.* Alabama et al. C. A. 11th Cir. Certiorari denied.

No. 20–7161. Artis *v.* Ohio. Ct. App. Ohio, 3d App. Dist., Logan County. Certiorari denied. Reported below: 2020-Ohio-4018.

No. 20–7165. Jackson *v.* Josiah, as Trustee. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 20–7176. Davis *v.* Shinn, Director, Arizona Department of Corrections, Rehabilitation and Reentry, et al. C. A. 9th Cir. Certiorari denied. Reported below: 827 Fed. Appx. 711.

No. 20–7178. Turner *v.* Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 2020–00047 (La. 9/29/20), 301 So. 3d 1158.

No. 20–7179. Viera *v.* Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 810.

No. 20–7192. Smith *v.* Stein et al. C. A. 4th Cir. Certiorari denied. Reported below: 982 F. 3d 229.

No. 20–7193. Stuart *v.* Brnovich, Attorney General of Arizona, et al. C. A. 9th Cir. Certiorari denied.

No. 20–7203. Francis *v.* Texas. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 20–7221. Cannon *v.* Clarke, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 276.

No. 20–7241. Gosselin *v.* Massachusetts. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 486 Mass. 256, 158 N. E. 3d 8.

No. 20–7260. Hopkins *v.* Florida. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 277 So. 3d 112.

No. 20–7262. Stills *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 229 A. 3d 388.

No. 20–7274. Griffis *v.* Parish, Warden. C. A. 6th Cir. Certiorari denied.

No. 20–7275. Herron *v.* Inch, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 20–7289. Campbell *v.* Bottling Group, LLC. C. A. 2d Cir. Certiorari denied. Reported below: 814 Fed. Appx. 630.

No. 20–7295. Sauceda *v.* Shinn, Director, Arizona Department of Corrections, Rehabilitation and Reentry, et al. C. A. 9th Cir. Certiorari denied.

No. 20–7310. Johnson *v.* Johnson, Warden. C. A. 9th Cir. Certiorari denied.

No. 20–7320. Laskowski *v.* Washington State Department of Labor and Industries. Ct. App. Wash. Certiorari denied. Reported below: 12 Wash. App. 2d 806, 460 P. 3d 697.

No. 20–7343. Williams *v.* Utah. Ct. App. Utah. Certiorari denied. Reported below: 2020 UT App 67, 462 P. 3d 832.

No. 20–7345. Lewis *v.* Legrand, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 20–7361. Ayers *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 20–7364. Baldwin *v.* Clark, Superintendent, State Correctional Institution at Albion, et al. C. A. 3d Cir. Certiorari denied.

No. 20–7367. Bostic *v.* Inch, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 20–7370. Bradford *v.* Perry, Warden. C. A. 11th Cir. Certiorari denied.

No. 20–7372. Ockert *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 829 Fed. Appx. 338.

No. 20–7380. Wyatt *v.* Sutton, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 838 Fed. Appx. 266.

No. 20–7384. Toliver *v.* Adner. C. A. 2d Cir. Certiorari denied. Reported below: 836 Fed. Appx. 68.

No. 20–7395. Wills *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 20–7400. Bartlett *v.* Valentine, Warden. C. A. 6th Cir. Certiorari denied.

No. 20–7404. Smith *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 967 F. 3d 1196.

No. 20–7408. Napper *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 978 F. 3d 118.

No. 20–7409. Pena-Garcia *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 222.

No. 20–7415. Griffin *v.* New York. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 188 App. Div. 3d 1701, 136 N. Y. S. 3d 619.

No. 20–7417. Pace *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 20–7418. Jennings *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 252.

No. 20–7419. Johnson *v.* Mackelburg, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 293.

No. 20–7421. Levine *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 829 Fed. Appx. 909.

No. 20–7428. Marones *v.* Ford, Attorney General of Nevada, et al. C. A. 9th Cir. Certiorari denied.

No. 20–7438. Stegawski *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 20–7439. Luis Suarez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 830 Fed. Appx. 612.

No. 20–7441. Rudenko *v.* Shanley, Superintendent, Coxsackie Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 20–7444. Bruce *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 977 F. 3d 1112.

No. 20–7446. Rivera Arreola *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 831 Fed. Appx. 690.

No. 20–7448. Johnson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 837 Fed. Appx. 373.

No. 20–7449. Nunez *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 20–7451. Jenner *v.* Colorado Department of Corrections et al. Ct. App. Colo. Certiorari denied.

No. 20–7452. Lucas *v.* Social Security Administration. C. A. 4th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 176.

No. 20–7453. Jackson *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 833 Fed. Appx. 23.

No. 20–7456. Ayala-Solorio *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 227.

No. 20–7457. Morris *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 20–7458. Rajput *v.* Terrell et al.; and Rajput *v.* Fogg. Sup. Ct. Va. Certiorari denied.

No. 20–7459. Rosario *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 837 Fed. Appx. 117.

No. 20–7461. Kendrick *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 825 Fed. Appx. 77.

No. 20–7465. Asuncion *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 974 F. 3d 929 and 819 Fed. Appx. 571.

No. 20–7468. Feazell *v.* United States. Ct. App. D. C. Certiorari denied.

No. 20–7469. Hernandez-Ayala *v.* Baker, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 20–7471. Perez *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 20–7472. Milner *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 20–7473. Obregon *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 834 Fed. Appx. 117.

No. 20–7475. Jessie *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 826 Fed. Appx. 410.

No. 20–7476. Ramos Cabrera *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 837 Fed. Appx. 981.

No. 20–7477. Jabbar *v.* Graham, Judge, United States District Court for the Southern District of Ohio. C. A. 6th Cir. Certiorari denied.

No. 20–7483. Medel-Guadalupe *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 987 F. 3d 424.

No. 20–7486. Guzman-Merced *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 984 F. 3d 18.

No. 20–7488. Hampton *v.* Williams, Warden. C. A. 5th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 243.

No. 20–7489. Formica *v.* Clarke, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 178.

No. 20–7493. Luis Sanchez *v.* Holbrook et al. C. A. 9th Cir. Certiorari denied. Reported below: 831 Fed. Appx. 342.

No. 20–7494. Simmons *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 20–7496. Spriggs *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 125.

No. 20–7498. Almeida-Olivas *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 20–7501. Arroyo-Hernandez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 396.

No. 20–7503. Jones *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 833 Fed. Appx. 528.

No. 20–7507. Faella *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 819 Fed. Appx. 844.

No. 20–7508. Campbell *v.* Brown, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 142.

No. 20–7509. Leon Del Angel *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 837 Fed. Appx. 475.

No. 20–7516. Portillo *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 981 F. 3d 181.

No. 20–7519. Salwan *v.* Hirshfeld, Acting Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. C. A. Fed. Cir. Certiorari denied. Reported below: 825 Fed. Appx. 862.

No. 20–7521. Lewis *v.* New York. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 185 App. Div. 3d 415, 127 N. Y. S. 3d 33.

No. 20–7524. Byrd *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 838 Fed. Appx. 762.

No. 20–7529. Moore *v.* United States. Ct. App. D. C. Certiorari denied.

No. 20–7546. Shumpert *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 20–7551. Bolze *v.* Warden, Federal Correctional Institution Coleman. C. A. 6th Cir. Certiorari denied.

No. 20–7552. Alvarez-Reyes *v.* Cain, Superintendent, Snake River Correctional Institution. C. A. 9th Cir. Certiorari denied.

No. 20–7556. McKnight *v.* Johnson et al. C. A. 9th Cir. Certiorari denied. Reported below: 839 Fed. Appx. 130.

No. 20–7567. Cole *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 20–8. Deutsche Bank Trust Company Americas et al. *v.* Robert R. McCormick Foundation et al. C. A. 2d Cir. Certiorari denied. Justice Alito took no part in the consideration or decision of this petition. Reported below: 946 F. 3d 66.

No. 20–209. Gadelhak *v.* AT&T Services, Inc. C. A. 7th Cir. Certiorari denied. Justice Barrett took no part in the consideration or decision of this petition. Reported below: 950 F. 3d 458.

No. 20–363. Whatley *v.* Warden, Georgia Diagnostic and Classification Prison. C. A. 11th Cir. Certiorari denied. Reported below: 927 F. 3d 1150.

JUSTICE SOTOMAYOR, dissenting.

A jury sentenced petitioner Frederick R. Whatley to death the morning after watching him reenact a murder while wearing unnecessary leg irons and manacles. When the State called Whatley to the stand during the sentencing proceeding, his attorney waved away the prosecutor's concerns about the visible shackles, then sat silent when the prosecutor handed Whatley a fake gun and asked him to reenact the murder for which he had just been convicted. Defense counsel's unreasonable failure to object to Whatley's shackling was plainly prejudicial under this Court's precedent. I would grant the petition, summarily reverse, and remand for a new sentencing proceeding.

I

Following Whatley's conviction for robbing and killing the owner of a Georgia bait shop and liquor store, the State asked the jury to impose a sentence of death. The sentencing proceeding involved just one day of evidence. The State relied on two, conceded statutory aggravating circumstances: Whatley committed the murder (1) during an armed robbery, Ga. Code Ann. § 17–10–30(b)(2) (Supp. 2019), and (2) after having "escaped from [a] place of lawful confinement," § 17–10–30(b)(9), because he had walked away from a halfway house to which he had been paroled a few months earlier. The State further showed that Whatley had prior convictions for forging a check, threatening a man with a shotgun and taking his wallet, and simple assault. Finally, the State elicited testimony from a sheriff's deputy that Whatley once wondered aloud whether he would miss the Super Bowl while in custody. Electronic Case Filing in *Whatley* v. *Upton*, No. 3:09–cv–00074, Doc. 7–9 (ND Ga., July 28, 2009), pp. 15, 22 (ECF). This, the State argued, proved Whatley felt no remorse for his crimes. ECF Doc. 7–11, at 31.

Defense counsel called a number of Whatley's friends and family, followed by Whatley himself. Whatley had worn shackles throughout the guilt phase, but the court took care to ensure the jury did not see the restraints. See, *e. g.*, ECF Doc. 7–5, at 110, 135–138. When defense counsel called Whatley to testify at sentencing, the prosecutor sensibly asked if the court needed to "take the jury out before he takes the stand" in light of the "chains" and "shackles on him." Defense counsel waved off the prosecutor's concern. "Well, he's convicted now," he shrugged, referencing the jury's earlier guilty verdict. The trial court echoed that conclusion: "He's been convicted." ECF Doc. 7–9, at 106. The court never found that the restraints were even necessary, much less that there was no way to hide them from the jury.

Whatley hobbled to the witness stand. His leg irons and cuffs were in plain view. He testified for several hours in those restraints. Among other things, Whatley contested the State's version of the shooting for which he had been convicted. The State claimed that Whatley tried to execute the witnesses to his crime after the storeowner gave him the money, shooting the owner in the chest and nearly shooting an employee but hitting the counter instead. The storeowner, mortally wounded, pulled his own gun. Whatley ran, and the two exchanged shots in the parking lot before the owner died. Whatley, however, testified that the storeowner pulled a gun immediately after giving him the money, and Whatley reflexively fired a single shot that hit the counter before running away. The owner gave chase, and Whatley killed him during the shootout outside.

On cross-examination, the prosecutor asked Whatley to "step down" from the witness box to demonstrate his version of events. The prosecutor handed Whatley a "toy pistol," noting, "Now, this is not the type of gun you had that day. I hope you'll understand why I don't want to give you a real gun." ECF Doc. 7–10, at 13. He told Whatley to "show this jury how you held a gun on [the victim] and told him to give you that money. Now, you go ahead and show them. You pretend I'm [the victim]. You pull the gun on me and show them how you did it." *Id.*, at 14. With no objection from his attorney, Whatley reenacted the armed robbery and shooting, shuffling around the courtroom with shackles on his legs and waving the gun around with cuffs on his wrists. The prosecutor maintained a running commentary. See *ibid.* ("Show me how you pointed it at him"); *id.*, at 15 ("I want you to point the gun at me just like you did him that day"). He ended his cross-examination shortly thereafter. *Id.*, at 19. Defense counsel never objected.

The next morning, the prosecutor argued in closing that the jury should sentence Whatley to death primarily because he posed a severe threat of future violence. See, *e. g.*, ECF Doc. 7–11, at 20 ("[I]f you think that a guard gets between him and life and he won't kill a guard, you'd better think again"). The court gave no curative instruction about Whatley's shackling. The jury deliberated for 90 minutes before recommending the death penalty.

On direct appeal, the Georgia Supreme Court found that Whatley forfeited his claim that his visible shackling violated his due process rights because his lawyer affirmatively waived any objection despite the prosecutor's stated concerns. *Whatley* v. *State*, 270 Ga. 296, 302, 509 S. E. 2d 45, 52 (1998).

Whatley then filed a state habeas petition, arguing that his trial attorney's failure to object to his unnecessary shackling constituted ineffective assistance of counsel. The Georgia Supreme Court rejected the petition. *Whatley* v. *Terry,* 284 Ga. 555, 571–572, 668 S. E. 2d 651, 663 (2008). While acknowledging that unnecessary shackling is presumptively prejudicial when an objection is properly preserved, the court held that defendants retain their burden to show prejudice when they claim trial counsel was ineffective for failing to object. *Ibid.* The court summarily concluded that Whatley had not made that showing. *Ibid.*

Whatley filed a federal habeas petition, arguing that the state court's denial of his ineffective-assistance claim was contrary to and an unreasonable application of clearly established federal law. The Eleventh Circuit disagreed. 927 F. 3d 1150, 1184–1187 (2019). The court explained at length why Whatley was not entitled to a presumption of prejudice, and then determined in one short paragraph that Whatley's "violent criminal history" and failure to "turn things around," together with the crimes at issue, rendered the shackling "trivial." *Id.,* at 1187.

Judge Jordan dissented. In his view, the state court's ruling might have been reasonable "had the shackles merely been visible to the jury when Mr. Whatley walked to the witness box. Or if the trial court had given a curative instruction to the jury about the restraints. Or if Mr. Whatley was not forced to reenact the murder in front of the jury while the prosecutor played the role of the victim. Or if the prosecutor had not explicitly made Mr. Whatley's future dangerousness a key theme in favor of his request for death." *Id.,* at 1193. But with these facts taken together, prejudice was "undeniable." *Ibid.*

II

To succeed on an ineffective-assistance-of-counsel claim, Whatley must show that his counsel's deficient performance prejudiced him. *Strickland* v. *Washington*, 466 U. S. 668, 688, 694 (1984). Prejudice means a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*, at 694. Because Georgia requires unanimity to impose a capital sentence, Whatley need only show a reasonable probability that one juror would have voted against the death penalty absent his counsel's deficiency.[1] See *Wiggins* v. *Smith*, 539 U. S. 510, 537 (2003). However, relief is only available under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) if the state court's conclusion that any deficiency was not prejudicial "was contrary to, or involved an unreasonable application of, clearly established Federal law." 28 U. S. C. § 2254(d)(1). Under this standard, federal courts do not defer to a "state-court decision that correctly identifies the governing legal rule but applies it unreasonably to the facts of a particular prisoner's case." *Williams* v. *Taylor*, 529 U. S. 362, 407–408 (2000).

III

A

This Court long ago recognized that "no person should be tried while shackled . . . except as a last resort," in part because "the sight of shackles . . . might have a significant effect on the jury's feelings about the defendant." *Illinois* v. *Allen*, 397 U. S. 337,

[1] Georgia argued in state court that "counsel should not be regarded as having performed deficiently by failing to object to the shackling, because the practice had not yet been established as unconstitutional." *Whatley* v. *Terry*, 284 Ga. 555, 571, 668 S. E. 2d 651, 663 (2008). The Georgia Supreme Court all but rejected that argument, as it "had already strongly suggested in dictum that it was unconstitutional to place visible shackles on a death penalty defendant during the sentencing phase without a showing of particular need." *Ibid.*, and n. 38 (citing *Moon* v. *State*, 258 Ga. 748, 755, 375 S. E. 2d 442, 449 (1988)). Given its conclusion on prejudice, however, the court simply assumed deficiency. 284 Ga., at 571, 668 S. E. 2d, at 663. The State wisely does not raise this issue here. In addition to state-court decisions, this Court had several times emphasized the prejudicial nature of shackling, well before the trial in this case. See *Illinois* v. *Allen*, 397 U. S. 337, 344 (1970); *Holbrook* v. *Flynn*, 475 U. S. 560, 568–569 (1986). Indeed, the prosecutor himself suggested that the court excuse the jury so Whatley could take the stand outside their presence, thus hiding his chains. ECF Doc. 7–9, at 106. Certainly, a reasonable defense attorney would not have taken it upon himself to overrule the prosecutor's objection to the defendant's unfair treatment.

344 (1970). "Shackling" is "the sort of inherently prejudicial practice that . . . should be permitted only where justified by an essential state interest specific to each trial." *Holbrook* v. *Flynn*, 475 U. S. 560, 568–569 (1986).

In 2005, this Court held that needless, visible shackling at sentencing likewise violates a capital defendant's right to due process under the Fifth and Fourteenth Amendments. *Deck* v. *Missouri*, 544 U. S. 622, 633 (2005). In that case, Carman Deck was visibly "shackled with leg irons, handcuffs, and a belly chain" during his capital sentencing, over his attorney's objection and with no finding of specific need. *Id.*, at 625. This Court explained in no uncertain terms that shackling is highly likely to be prejudicial at a capital sentencing:

> "The Court has stressed the acute need for reliable decisionmaking when the death penalty is at issue. The appearance of the offender during the penalty phase in shackles, however, almost inevitably implies to a jury, as a matter of common sense, that court authorities consider the offender a danger to the community—often a statutory aggravator and nearly always a relevant factor in jury decisionmaking, even where the State does not specifically argue the point. It also almost inevitably affects adversely the jury's perception of the character of the defendant. And it thereby inevitably undermines the jury's ability to weigh accurately all relevant considerations—considerations that are often unquantifiable and elusive—when it determines whether a defendant deserves death." *Id.*, at 632–633 (citations and internal quotation marks omitted).

Because these prejudicial effects " 'cannot be shown from a trial transcript,' " the Court in *Deck* further held that "where a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation." *Id.*, at 635. The burden instead rests on the State to prove the shackling harmless. *Ibid.*

B

To be sure, *Deck* does not require reviewing courts to presume prejudice when the defendant fails to object to his shackling at trial. This Court has not decided to what extent such a presumption applies on collateral review, in the context of an ineffective-assistance-of-counsel claim. Cf. *Weaver* v. *Massachusetts*, 582 U. S. 286, 302 (2017). Both the Georgia Supreme Court and Eleventh Circuit held that the *Deck* presumption does not apply to ineffective-assistance-of-counsel claims. 284 Ga., at 571–572, 668 S. E. 2d, at 663; 927 F. 3d, at 1184–1187. That was not a clearly erroneous application of federal law.

What was clearly unreasonable, however, was to ignore entirely the ways in which visible shackling is likely to distort the outcome of a capital sentencing proceeding. As *Deck* explains, reasonable jurors confronted with a defendant in chains will assume court officials have determined those chains were necessary to prevent the defendant from trying to escape or attack the lawyers, the judge, or even the jurors. Chains paint a defendant as an immediate threat. Jurors faced with a defendant in shackles will find it more difficult to consider the defendant as a whole person and to weigh mitigating evidence impartially. If jurors think the court does not trust a capital defendant to avoid violence at his own sentencing proceeding, with his life on the line, they are unlikely to trust him to do so while serving a life sentence with no hope of parole. "In these ways, the use of shackles can be a thumb on death's side of the scale." *Deck*, 544 U. S., at 633 (alteration and internal quotation marks omitted).

Absent a presumption, this may not matter in some cases. Other facts may overwhelmingly suggest a defendant's future dangerousness, or the circumstances surrounding the shackling may indicate it likely did not matter. Reasonable jurists faithfully applying *Strickland* in light of the observations in *Deck* might then disagree about whether counsel's failure to object may have caused prejudice. Under AEDPA, federal courts should defer to state-court decisions finding no prejudice in such cases.

That is not what happened here. For the grand finale of his cross-examination, the prosecutor handed Whatley a fake gun and had him reenact the murder, with the prosecutor playing the victim. Whatley's chains clanked and rattled with every move, constantly reminding the jury that the court apparently believed he might do more than just pretend to kill someone in the courtroom if left unrestrained. Leaving nothing to implication, the prosecutor remarked, "I hope you'll understand why I don't want to give you a real gun." ECF Doc. 7–10, at 13.

The prosecutor hammered this point home at length in closing. "Frederick Whatley," he told the jury, "is going to kill somebody else unless you execute him." ECF Doc. 7–11, at 17. Prison was "only going to make him smarter and meaner." *Id.*, at 27. "[D]o you think he won't kill a guard if that guard stands between him and freedom? He will be a threat until the day he is executed." *Ibid.* "This man should be given the death penalty because he is dangerous, he has had a history of violence, he's never going to get any better than what you've seen right now." *Id.*, at 28.

Whatley's chains, fresh in the jury's mind from the previous afternoon's spectacle, powerfully corroborated the prosecutor's argument. It is hard to imagine a more prejudicial example of needless shackling.

On the other hand, Whatley's criminal history was relatively minor and largely from his teenage years. The statutory aggravators in his case were less serious than in many other capital cases.[2] The State's only evidence of lack of remorse was that Whatley likes football. The evidence at the sentencing proceeding also showed that Whatley's mother abandoned him, he never knew his father, and he was experiencing homelessness when he committed this crime. Whatley's friends and family testified to his redeeming qualities and begged the jury to show mercy. If Whatley had testified free of chains, it is reasonably probable that at least one juror would have done so.

On these facts, defense counsel's failure to object to Whatley's unnecessary shackling renders his death sentence not only unreliable, but unconstitutional. The only way to conclude otherwise is to disregard this Court's clear precedent about the likely effect of visible, unnecessary shackling. Because I would not allow the State to put Frederick Whatley to death based on such a constitutionally flawed sentencing proceeding, I respectfully dissent.

No. 20–902. Flick *v.* Garland, Attorney General. C. A. 11th Cir. Motion of Firearms Policy Coalition et al. for leave to

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[2] See, *e. g.*, Ga. Code Ann. § 17–10–30(b)(7) (authorizing the death penalty for those who commit murders that involve "torture, depravity of mind, or an aggravated battery"); § 17–10–30(b)(11) (authorizing the death penalty for those who commit murder and have prior convictions for "rape, aggravated sodomy, aggravated child molestation, or aggravated sexual battery").

file brief as *amici curiae* granted. Certiorari denied. Reported below: 812 Fed. Appx. 974.

No. 20–982. Brown *v.* Polk County, Wisconsin, et al. C. A. 7th Cir. Certiorari denied. Justice Barrett took no part in the consideration or decision of this petition. Reported below: 965 F. 3d 534.

Statement of Justice Sotomayor respecting the denial of certiorari.

Petitioner Sharon Lynn Brown asks this Court to decide what degree of suspicion the Fourth Amendment requires to justify the physically penetrative cavity search of a pretrial detainee. While Brown was in pretrial detention, officials at Polk County Jail directed a male doctor to insert a speculum into her vagina, spread it open, and shine a flashlight inside to search for contraband. The doctor did the same to Brown's anus. The Court of Appeals for the Seventh Circuit held that mere reasonable suspicion justified this search. That is, for example, the same degree of suspicion required for police to stop someone on the street and ask a few, brief questions. See *Terry* v. *Ohio*, 392 U. S. 1, 21–22 (1968). Brown argues this much more invasive search required probable cause and a warrant or exigent circumstances. Those are, by comparison, the same prerequisites for police to draw blood from an unconscious motorist to determine his blood alcohol content. See *Mitchell* v. *Wisconsin*, 588 U. S. 840, 857 (2019).

This petition raises an important question. Nonetheless, I agree with the Court's decision to deny certiorari, as "further consideration of the substantive and procedural ramifications of the problem by other courts will enable us to deal with the issue more wisely at a later date." *McCray* v. *New York*, 461 U. S. 961, 962 (1983) (Stevens, J., statement respecting denial of certiorari).

It bears emphasis, however, that the degree of suspicion required for a search should be substantially informed by the availability of less intrusive alternatives. This Court does not lightly permit an entire category of warrantless, invasive searches when less offensive options exist. Particularly searches of those who have not been convicted of any crime. The courts below considered no such alternatives before holding that reasonable suspicion alone justified this degrading search into Brown's vagina and anus. Future courts presumably will not do the same.

I

In May 2017, police arrested Brown for shoplifting and took her to Wisconsin's Polk County Jail. The jail's written policy at the time permitted officials to direct medical personnel to perform "an inspection and penetration of the anal or vaginal cavity . . . by means of an instrument, apparatus, or object, or in any other manner" whenever they had "reasonable grounds" to believe a detainee was concealing "weapons, contraband, or evidence," or otherwise "believe[d] that the safety and security of the jail would benefit" from such a search. Electronic Case Filing in No. 3:18–cv–00391, Doc. 12–1 (WD Wis.), pp. 1, 6 (ECF). At least one correctional officer, respondent Steven Hilleshiem, sought permission for penetrative vaginal and anal searches "any time one inmate sa[id] another inmate ha[d] contraband on their person in a body cavity." ECF Doc. 14, p. 6, Tr. 19. He generally would not investigate the tipster's source, determine her reputation for honesty, or seek any other indicia of reliability. *Id.*, at 5–6, Tr. 17–19. In his view, the tip alone provided "reasonable grounds." *Id.*, at 7, Tr. 23. The jail administrator, respondent Wes Revels, similarly needed only Hilleshiem's word to approve a search. ECF Doc. 19, pp. 7–8, Tr. 22–23, 26–28.

A day after Brown's arrest, two inmates told jail staff that Brown was hiding drugs in her body. Hilleshiem contacted Revels, who authorized a cavity search.[1] Brown was taken to the hospital, where a male doctor performed an ultrasound that revealed no foreign objects. The doctor then inserted a speculum into her vagina, spread open the vaginal walls, and shined his headlamp inside. He did the same to her anus. He found no contraband.

Brown testified that, when the doctor removed the speculum from her anus, "I immediately started crying. I couldn't stop. I cried myself to sleep. I cried all the way back to the jail. I cried the whole time I was getting dressed." ECF Doc. 17, p. 32, Tr. 121. When she returned to the jail, she "asked to stay in the holding cell because [she] couldn't quit crying." *Ibid.*, Tr. 124. This trauma left Brown with anxiety and depression. She slept just three hours a night. *Id.*, at 15, Tr. 55. She experienced

[1] Because it is irrelevant to the question presented, there is no need to address whether these tips in fact provided reasonable suspicion.

flashbacks and feared leaving the house, terrified the police would pull her over and send her back to jail. *Id.*, at 15, Tr. 53; *id.*, at 17, Tr. 62–63. Nearly two years later, Brown was still afraid of being alone in a room with a man. Even her own brother. *Id.*, at 16–17, Tr. 59–61.

Brown sued Polk County, Hilleshiem, Revels, and others, alleging that they violated her Fourth Amendment right to be free from unreasonable searches. The District Court granted respondents' motion for summary judgment, concluding that a penetrative cavity search of a pretrial detainee requires only reasonable suspicion. The Seventh Circuit agreed. "[G]iven the heft of the security interest at stake," it reasoned, "the invasion to [Brown's] privacy was not so . . . grea[t] that it pushes the threshold suspicion requirement into probable cause." 965 F. 3d 534, 540 (2020).

II

The Seventh Circuit nowhere considered whether something less intrusive than "prying open [Brown's] vagina and anus" was sufficient to ensure jail security. *Id.*, at 541. That was error. The necessity of a search and its extent cannot be determined in a vacuum. It must instead "be judged in light of the availability of . . . less invasive alternative[s]." *Birchfield* v. *North Dakota*, 579 U. S. 438, 474 (2016). When such an option exists, the State must offer a "satisfactory justification for demanding the more intrusive alternative." *Ibid.* See also *Florida* v. *Royer*, 460 U. S. 491, 500 (1983) ("[T]he investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion").

This Court has thus held, for example, that the availability of a breath test to determine a suspect's blood alcohol content makes a blood draw for that purpose unreasonable, absent a warrant or exigent circumstances. *Birchfield*, 579 U. S., at 474. Two Members of this Court have underscored the importance of considering less intrusive alternatives in the context of searching pretrial detainees. See *Florence* v. *Board of Chosen Freeholders of County of Burlington*, 566 U. S. 318, 341–342 (2012) (ALITO, J., concurring) ("[A]dmission to the general jail population, with the concomitant humiliation of a strip search, may not be reasonable" for those who will soon be released, "particularly if an alternative procedure is feasible," such as separating "minor offenders from the general population"); *id.*, at 340 (ROBERTS, C. J., concurring) (emphasizing that "there was apparently no alternative" to housing the arrestee with the general population).

This is a sensible rule, particularly where, as here, the State seeks a categorical exception to the Fourth Amendment's warrant requirement. If courts permit extraordinarily intrusive searches of pretrial detainees without a warrant, correctional officers may abandon less invasive, but more burdensome, practices. Likewise, if officers are free to decide for themselves if they have the requisite degree of suspicion, some may cross the line, even if in perfectly good faith.[2] See *Brinegar* v. *United States*, 338 U. S. 160, 182 (1949) (Jackson, J., dissenting) ("We must remember that the extent of any privilege of search and seizure without warrant which we sustain, the officers interpret and apply themselves and will push to the limit"). The consequences will be borne by both the innocent and the guilty.

Consider Polk County Jail. Its official policy was to perform penetrative searches of pretrial detainees' vaginal and anal cavities based on mere reasonable suspicion. In practice, both Hilleshiem and Revels believed that even the barest accusations met that standard, with no corroboration needed. But see, *e. g.*, *Alabama* v. *White*, 496 U. S. 325, 330 (1990) ("[I]f a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion"). Anyone could have suffered the indignity of this practice. "If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." *Atwater* v. *Lago Vista*, 532 U. S. 318, 354 (2001). Meanwhile, "criminal laws have grown so exuberantly and come to cover so much previously innocent conduct that almost anyone can be arrested for something." *Nieves* v. *Bartlett*, 587 U. S. 391, 412 (2019) (GORSUCH, J., concurring in part and dissenting in part). An unbuckled seatbelt, a noisy muffler, an unleashed dog: Any one of countless petty misdemeanors might land you in jail. See *Florence*, 566 U. S., at 346–347 (BREYER, J., dissenting). Polk County did not distinguish between detainees. An unverified charge

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[2] That said, "the authority which we concede to conduct searches and seizures without [a] warrant may be exercised by the most unfit and ruthless officers as well as by the fit and responsible." *Brinegar* v. *United States*, 338 U. S. 160, 182 (1949) (Jackson, J., dissenting).

from a stranger with unknown motives could send anyone to the hospital for a penetrative search, just like Brown.[3]

Given the degrading nature of the search in this case, less invasive possibilities abound. The court below did not address the option of a solely visual search, see *id.*, at 322, or multiple visual searches over time. Prison officials could order an X ray or transabdominal ultrasound, as occurred here. They could isolate the detainee and investigate further to obtain probable cause. They could await a monitored bowel movement. See *United States* v. *Montoya de Hernandez*, 473 U. S. 531, 534–535, 541, and n. 4 (1985) (upholding prolonged detention of a traveler at the border reasonably suspected of smuggling contraband in her body); *United States* v. *Booker*, 728 F. 3d 535, 547 (CA6 2013) (discussing Customs and Border Patrol policy to first "attempt an x-ray," then "engage in a monitored bowel movement," and "only engage in an involuntary body cavity search after obtaining a court order"). There are likely many other less invasive options worth considering.

Some of these searches would be, to different degrees, less effective than that performed here. As discussed above, this is not the case to decide whether a penetrative cavity search is necessarily unreasonable in light of these potential alternatives. Going forward, however, courts must consider less intrusive possibilities before categorically allowing warrantless searches. This obligation weighs particularly heavily for dehumanizing searches of pretrial detainees like that which Brown endured here.

No. 20–1008. State Farm Life Insurance Co. *v.* Vogt. C. A. 8th Cir. Motion of American Council of Life Insurers for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 963 F. 3d 753.

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[3] People of color disproportionately bear these burdens. Brown is a member of the Fond du Lac Band of Lake Superior Chippewa. ECF Doc. 17, p. 17. Native American people are vastly overrepresented in Wisconsin jails and prisons. See Brief for National Alliance To End Sexual Violence et al. as *Amici Curiae* 12–13. Native American women, meanwhile, "experience sexual violence at higher rates than any other population in the United States." *Id.*, at 14. Consequently, "non-consensual body cavity searches are more likely to traumatize and retraumatize" Native American women and their communities. *Ibid.*

No. 20–1086. Stephens *v.* Dow Chemical Co. Ct. App. Ohio, 8th App. Dist., Cuyahoga County. Certiorari denied. Justice Alito took no part in the consideration or decision of this petition.

No. 20–1107. Melvin *v.* Federal Express Corp. C. A. 11th Cir. Motion of Jobs With Justice for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 814 Fed. Appx. 506.

No. 20–7148. Fawley *v.* Jablonski et al. C. A. 10th Cir. Certiorari denied. Justice Gorsuch took no part in the consideration or decision of this petition. Reported below: 827 Fed. Appx. 805.

No. 20–7437. Ramsey *v.* United States. C. A. 10th Cir. Certiorari denied. Justice Gorsuch took no part in the consideration or decision of this petition. Reported below: 830 Fed. Appx. 584.

No. 20–7467. Carver *v.* United States. C. A. 11th Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition.

Rehearing Denied

No. 19–8413. Pope *v.* Dunn, Commissioner, Alabama Department of Corrections, 591 U. S. 1007;

No. 20–607. Drevaleva *v.* Alameda Health System, 592 U. S. 1174;

No. 20–732. Wyche *v.* Occupational Safety and Health Administration, 592 U. S. 1235;

No. 20–758. Reynolds *v.* U. S. Bank N. A., 592 U. S. 1264;

No. 20–781. United States ex rel. Concilio de Salud Integral de Loiza, Inc., et al. *v.* J. C. Remodeling, Inc., et al., 592 U. S. 1265;

No. 20–863. Akeva L. L. C. *v.* Nike, Inc., et al., 592 U. S. 1267;

No. 20–909. Randhawa *v.* Bank of New York Mellon, fka Bank of New York, 592 U. S. 1303;

No. 20–932. Franklin *v.* Laughlin et al., 592 U. S. 1303;

No. 20–942. Buie *v.* Department of Labor, Administrative Review Board, 592 U. S. 1310;

No. 20–978. Metaxas *v.* United States, 592 U. S. 1269;

No. 20–5504. Martin *v.* Capron et al., 592 U. S. 1028;

No. 20–5532. Golden *v.* United States, 592 U. S. 1128;

No. 20–5594. Lucy *v.* Estate of Fox, 592 U. S. 1079;

No. 20–6139. Alvarado *v.* Inch, Secretary, Florida Department of Corrections, 592 U. S. 1182;

No. 20–6325. Delima *v.* Walmart Stores Arkansas, LLC, 592 U. S. 1221;

No. 20–6413. Shepard *v.* Department of Veterans Affairs et al., 592 U. S. 1311;

No. 20–6423. Lee *v.* AT&T Services, Inc., et al., 592 U. S. 1190;

No. 20–6501. Riley *v.* Meehan, 592 U. S. 1272;

No. 20–6525. Aranoff *v.* Aranoff, 592 U. S. 1272;

No. 20–6961. Pfoff *v.* United States, 592 U. S. 1285; and

No. 20–6976. Doctor *v.* United States, 592 U. S. 1285. Petitions for rehearing denied.

No. 20–302. Dotson *v.* United States, 592 U. S. 1003;

No. 20–976. Penny *v.* Lincoln's Challenge Academy, 592 U. S. 1306; and

No. 20–6487. Johnston *v.* United States, 592 U. S. 1225. Petitions for rehearing denied. Justice Barrett took no part in the consideration or decision of these petitions.

No. 20–5989. Karnofel *v.* Superior Waterproofing, Inc., 592 U. S. 1152. Motion for leave to file petition for rehearing denied.

April 23, 2021

Miscellaneous Order

No. 19–251. Americans for Prosperity Foundation *v.* Rodriquez, Acting Attorney General of California; and

No. 19–255. Thomas More Law Center *v.* Rodriquez, Acting Attorney General of California. C. A. 9th Cir. [Certiorari granted *sub nom.* in No. 19–251, *Americans for Prosperity Foundation* v. *Becerra*; in No. 19–255, *Thomas More Law Center* v. *Becerra*, 592 U. S. 1162.] Motion of Thomas More Law Center to file reply brief out of time granted.

April 26, 2021

Certiorari Granted—Vacated and Remanded. (See also *Alaska* v. *Wright*, 593 U. S. 152 (2021) (*per curiam*).)

No. 20–746. South Bay United Pentecostal Church et al. *v.* Newsom, Governor of California, et al. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Tandon* v. *Newsom*, 593 U. S. 61 (2021) (*per curiam*).

Certiorari Dismissed

No. 20–7201. Alfred *v.* Inch, Secretary, Florida Department of Corrections. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 809 Fed. Appx. 737.

Miscellaneous Orders

No. 20A150. Texas et al. *v.* Cook County, Illinois, et al. D. C. N. D. Ill. In 2019, the Department of Homeland Security promulgated through notice and comment a rule defining the term "public charge." The District Court in this case vacated the rule nationwide, but that judgment was stayed pending DHS' appeal to the United States Court of Appeals for the Seventh Circuit. On March 9, 2021, following the change in Presidential administration, DHS voluntarily dismissed that appeal, thereby dissolving the stay of the District Court's judgment. And on March 15, DHS relied on the District Court's now-effective judgment to remove the challenged rule from the Code of Federal Regulations without going through notice and comment rulemaking. Shortly after DHS had voluntarily dismissed its appeal, a group of States sought leave to intervene in the Court of Appeals. When that request was denied, the States filed an application for leave to intervene in this Court and for stay of the District Court's judgment. The States argue that DHS has prevented enforcement of the rule while insulating the District Court's judgment from review. The States also contend that DHS has rescinded the rule without following the requirements of the Administrative Procedure Act. We deny the application, without prejudice to the States raising these and other arguments before the District

Court, whether in a motion for intervention or otherwise. After the District Court considers any such motion, the States may seek review, if necessary, in the Court of Appeals, and in a renewed application in this Court. JUSTICE BARRETT took no part in the consideration or decision of this application.

No. 20M70. ZEGEYE *v.* WELLS FARGO BANK, N. A.; and

No. 20M72. MONTANA DEPARTMENT OF PUBLIC SERVICE REGULATION *v.* MTSUN, LLC. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 20M71. KING *v.* KLEM ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied. JUSTICE ALITO took no part in the consideration or decision of this motion.

No. 153, Orig. TEXAS *v.* CALIFORNIA. Motion for leave to file bill of complaint denied. [For earlier order herein, see 590 U. S. 991.]

JUSTICE ALITO, with whom JUSTICE THOMAS joins, dissenting.

Suppose the following occurred. A Texan and a Californian are involved in a traffic accident in California. The Texan tries to sue the Californian in federal district court and invokes the "diversity" jurisdiction conferred by 28 U. S. C. § 1332(a)(1), which provides that "[t]he district courts shall have original jurisdiction of all civil actions . . . between . . . citizens of different States" where the amount in controversy exceeds $75,000. Suppose the district court refuses to allow the filing of the complaint and explains: "I know that the Constitution and a federal statute give me jurisdiction over diversity cases, and I know that the Framers of the Constitution and the Congress that enacted the statute thought that diversity jurisdiction was important because it provides a neutral forum for out-of-state parties. But in my opinion, that's not really so important anymore, and if I have to handle diversity suits, I won't have the time I need to deal with more important matters. Therefore, in the exercise of my discretion, I am ordering that the complaint not be accepted for filing." Suppose a court of appeals affirmed this decision and the case came before us. What would we do?

We would reverse in the blink of an eye. We might also wag a finger at the lower courts and remind them that a federal court's obligation to hear and decide cases within its jurisdiction is "virtually unflagging." *Colorado River Water Conservation Dist.* v. *United States*, 424 U. S. 800, 817 (1976); see also, *e. g., Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 572 U. S. 118, 126 (2014); *Sprint Communications, Inc.* v. *Jacobs*, 571 U. S. 69, 77 (2013). We might emphasize that federal courts do not have freewheeling discretion to spurn categories of cases that they don't like.

If this is how we would respond to this imaginary Texan versus Californian tort suit, how can we refuse to allow the filing of the complaint in this case? The State of Texas wishes to sue the State of California and invokes our "original and exclusive jurisdiction of all controversies between two or more States." 28 U. S. C. § 1251(a); see also U. S. Const., Art. III, § 2, cl. 2. Can we justify our refusal to entertain Texas's suit on essentially the same ground that we would reject out of hand in the hypothetical diversity case just described, that is, on the ground that our original jurisdiction no longer seems as important as it was when the Constitution was adopted, and that a proliferation of original cases would crowd out more important matters on our appellate docket? See *Illinois* v. *Milwaukee*, 406 U. S. 91, 93–94 (1972); *Ohio* v. *Wyandotte Chemicals Corp.*, 401 U. S. 493, 497–499 (1971). It is not easy to see how the refusal to entertain Texas's suit can be justified on that ground—particularly since our rejection of Texas's complaint leaves the State in a more difficult position than our imaginary Texas motorist. That person could at least file suit in a state court, but if our jurisdiction under § 1251(a) is truly exclusive, the State is left without *any* judicial forum. Cf. *Franchise Tax Bd. of Cal.* v. *Hyatt*, 587 U. S. 230, 245 (2019) (noting "inability of one State to hale another into its courts without the latter's consent").

In fairness to the Court, what it does in this case—claiming the discretion to refuse to entertain Texas's suit—is consistent with a practice the Court has followed for the past 45 years. But in all that time, the Court has never provided a convincing justification for the practice. In *Cohens* v. *Virginia*, 6 Wheat. 264 (1821), Chief Justice Marshall's opinion for the Court famously proclaimed: "We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution." *Id.*, at 404.

The Court has stepped back a bit from this categorical pronouncement—but only a bit. See, *e. g., Sprint Communications,* *Inc.*, 571 U. S., at 77. The Court has repeatedly stressed that a federal court is *almost always* obligated to entertain a case over which it has jurisdiction. *Ibid.* Instances in which this is not required are the rare exception.

The Court's practice regarding original jurisdiction cases, however, has expanded far beyond anything that might be called an exception. Indeed, commentators have written that the practice has made our original jurisdiction " 'almost as discretionary as [our] certiorari jurisdiction over appellate cases.' " S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, Supreme Court Practice 639 (10th ed. 2013) (hereinafter Stern & Gressman).

I

How did the Court come to adopt a practice that seems so inconsistent with the principle the *Cohens* Court thought self-evident? Like many a questionable habit, the practice developed incrementally. For the first 150 years after the adoption of the Constitution, the Court never refused to permit the filing of a complaint in a case falling within its original jurisdiction.[1] See Stern & Gressman 634; Stevenson, Exclusive Original Jurisdiction of the United States Supreme Court: Does It Still Exist? 1982 B. Y. U. L. Rev. 727, 729. The first whisper of the notion that the Court might decline to exercise its original jurisdiction appeared in *Louisiana* v. *Texas*, 176 U. S. 1 (1900). There, the Court held that the case did not actually constitute a dispute between two States, but it added that the Court's jurisdiction to hear such suits "is of so delicate and grave a character that it was not contemplated that it would be exercised save when the necessity was absolute." *Id.*, at 15.

Another 39 years would go by before the Court took the next step toward its current practice, and when it took that step, it did so in a roundabout way. In *Massachusetts* v. *Missouri*, 308 U. S. 1 (1939), the dispute concerned the two States' right to impose state inheritance taxes on securities held in trusts that had been created by a Massachusetts decedent but were adminis-

[1] The Court did not accept every case filed during that period, of course—it rejected some for lack of standing and on account of other justiciability defects. See, *e. g.*, *Louisiana* v. *Texas*, 176 U. S. 1, 24 (1900) (Harlan, J., concurring in result) (arguing Article III did not bestow jurisdiction over cases testing the constitutionality of "local statutes or regulations that do not affect the property or the powers of the complaining State in its sovereign or corporate capacity"); see generally Stern & Gressman 622–634.

tered in Missouri by Missouri trustees. Noting that there were ample funds in the trusts to pay the taxes imposed by both States, the Court first held the dispute was not really between two States and that therefore the controversy did not fall within the Court's exclusive original jurisdiction. *Id.*, at 15–17. The Court then turned to Massachusetts's fallback argument that its claim could be understood as one against Missouri citizens and that therefore the claim at least fell within the Court's non-exclusive original jurisdiction over cases between a State and a citizen of another State. The Court expressed doubt that the bill could be read to assert such a claim and only then turned to the question whether the Court would be obligated to entertain the claim if the bill could be interpreted that way. The Court observed that a court is not always required to entertain a suit within its jurisdiction when the suit may be brought in another forum; that the suit at hand was not necessary for Massachusetts's "protection" because Massachusetts could apparently bring its suit in a Missouri court; and that entertaining suits like this one would potentially impose an "enormous burden" and "might seriously interfere with the discharge by th[e] Court of its duty in deciding cases and controversies appropriately brought before it." *Id.*, at 18–19.

In *Wyandotte Chemicals Corp.*, 401 U. S. 493, the Court returned to the question of declining to exercise its non-exclusive original jurisdiction. The Court acknowledged that "it may initially have been contemplated that this Court would always exercise its original jurisdiction when properly called upon to do so." *Id.*, at 497. But the Court opined that changes in the American legal system had rendered that view "untenable, as a practical matter." *Ibid.* "What gives rise to the necessity for recognizing [the] discretion" to decline to entertain original-jurisdiction cases, the Court explained, was "pre-eminently the diminished societal concern in our function as a court of original jurisdiction and the enhanced importance of our role as the final federal appellate court." *Id.*, at 499.

The next year, the Court said in dicta that it would exercise the same discretion in cases within its exclusive original jurisdiction: "We construe 28 U. S. C. § 1251(a)(1), as we do Art. III, § 2, cl. 2, to honor our original jurisdiction but to make it obligatory only in appropriate cases." *Illinois* v. *Milwaukee*, 406 U. S., at 93. The Court provided little justification for this assertion. In the next sentence, the Court noted that an important factor in determining whether a case is "appropriate" is "the availability of another forum where there is jurisdiction over the named parties," *ibid.*, but it is hard to see how this factor has a bearing on the refusal to exercise exclusive jurisdiction. And in the final sentence devoted to the subject, the Court gave this explanation: "We incline to a sparing use of our original jurisdiction so that our increasing duties with the appellate docket will not suffer." *Id.*, at 93–94.

The dicta in *Illinois* v. *Milwaukee* became a holding in *Arizona* v. *New Mexico*, 425 U. S. 794 (1976) (*per curiam*), where, for the first time, the Court declined to exercise its exclusive jurisdiction in a controversy between two States. See *id.*, at 796–797. While the state parties could not litigate in any other federal court, the Court justified its decision by observing that the "*issues* tendered" were already being litigated in a pending state-court action. *Id.*, at 797.

Since that time, the Court has repeatedly declined to exercise its exclusive original jurisdiction in state-versus-state cases, relying on the rationales provided in these earlier decisions. See, *e. g.*, *Wyoming* v. *Oklahoma*, 502 U. S. 437 (1992); *Louisiana* v. *Mississippi*, 488 U. S. 990 (1988); *Texas* v. *New Mexico*, 462 U. S. 554 (1983); *California* v. *Texas*, 457 U. S. 164 (1982) (*per curiam*). Justices have written separately to question whether we really have discretion to decline to hear such cases. See *Arizona*, 425 U. S., at 798–799 (Stevens, J., concurring); *California* v. *West Virginia*, 454 U. S. 1027 (1981) (Stevens, J., dissenting); *Louisiana*, 488 U. S., at 990 (White, J., dissenting); *Nebraska* v. *Colorado*, 577 U. S. 1211 (2016) (THOMAS, J., joined by ALITO, J., dissenting); *Arizona* v. *California*, 589 U. S. 1199 (2020) (same). And scholars have criticized the practice. See, *e. g.*, R. Fallon, J. Manning, D. Meltzer, & D. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 275 (7th ed. 2015); Shapiro, Jurisdiction and Discretion, 60 N. Y. U. L. Rev. 543, 561, 576 (1985); Stevenson, 1982 B. Y. U. L. Rev., at 747–748. But the Court has not relented.

II

The practice of refusing to permit the filing of a complaint in cases that fall within our original jurisdiction is questionable, and that is especially true when, as in this case, our original jurisdictional is exclusive. As the history recounted above reveals, the Court adopted this practice without ever providing a convincing justification. The principal reason provided—that entertaining all suits between two States would crowd out consideration of more important matters on our appellate docket—rests on a dubious factual premise and, in any event, is essentially indistinguishable from the justification given by the imaginary district court judge with a distaste for diversity cases. And the suggestion in *Louisiana* v. *Texas*, 176 U. S., at 15, that we should hesitate to entertain suits between two States because they are of a "delicate and grave" character seems exactly backwards. It is precisely because these disputes have a "delicate and grave" character that they were placed exclusively in our hands. See The Federalist No. 81, p. 487 (C. Rossiter ed. 1961) (A. Hamilton) ("In cases in which a State might happen to be a party, it would ill suit its dignity to be turned over to an inferior tribunal"); *California* v. *Arizona*, 440 U. S. 59, 65–66 (1979). Unlike the regional courts of appeals, the federal district courts, and the state courts, we are not tied to any region or State and were therefore entrusted with the responsibility of adjudicating cases where the suspicion of local bias may run high. Cf. The Federalist No. 80 (A. Hamilton); *Chisholm* v. *Georgia*, 2 Dall. 419, 475 (1793). The present case is just such a suit.

III

This case involves a dispute between our two most populous States. In 2016, the California Legislature enacted a law, AB 1887, that prohibits state-funded or state-sponsored travel to any State whose laws fail to meet specified standards regarding discrimination on the basis of sexual orientation, gender identity, or gender expression. See Cal. Govt. Code Ann. § 11139.8 (West). The law authorizes the California attorney general to identify States that should be subject to the ban, § 11139.8(e)(1), and as of the date of the filing of Texas's motion, 11 States had been targeted: Alabama, Iowa, Kansas, Kentucky, Mississippi, North Carolina, Oklahoma, South Carolina, South Dakota, Tennessee, and Texas. According to press releases issued by California Attorney General Becerra and the State's website, 9 of the 11 States were subjected to the ban because of laws or practices designed to protect religious liberty.[2] Iowa was placed on the list because it

[2] See California Will Restrict State-Funded and State-Sponsored Travel to South Carolina (Apr. 2, 2019), https://oag.ca.gov/news/press-releases/attorney-general-becerra-california-will-restrict-state-funded-and-state-0; California

won't provide Medicaid coverage for gender-reassignment surgery. See California Will Restrict State-Funded and State-Sponsored Travel to Iowa (Sept. 13, 2019), https://oag.ca.gov/news/press-releases/attorney-general-becerra-california-will-restrict-state-funded-and-state-1. Travel to North Carolina was banned because the State enacted a law requiring state agencies to maintain separate-sex bathrooms and changing facilities and that prohibited certain local antidiscrimination ordinances. See North Carolina Remains on List of Restricted States (Apr. 12, 2017), https://oag.ca.gov/news/press-releases/attorney-general-xavier-becerra-north-carolina-remains-list-restricted-states. Several of the States placed on California's list have retaliated by imposing similar restrictions on state-funded or state-sponsored travel to California. See Press Release, Office of Okla. Governor, Stitt Issues Executive Order Banning State-Funded Travel to California (Jan. 23, 2020), https://www.governor.ok.gov/articles/press_releases/stitt-issues-executive-order-banning-state-funded-; A. Sher, Legislators Strike Back at California Ban on State-Funded Travel to Volunteer State, Chattanooga Times Free Press, Mar. 16, 2018, 2018 WLNR 8221967.

In seeking to file its complaint, Texas argues that this is precisely the type of dispute for which our exclusive original jurisdiction was designed. Texas writes that " 'the model case for [the] invocation of [our] original jurisdiction is a dispute between States of such seriousness that it would amount to *casus belli* if the States were fully sovereign.' " Brief in Support of Motion for Leave To File Bill of Complaint 15 (quoting *Texas* v. *New Mexico*, 462 U. S., at 571, n. 18; first alteration in original). Texas notes that economic sanctions have often roiled international relations and have sometimes led to war. Brief in Support of Motion 15–18. And Texas reminds us that the Founders were well aware

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Will Restrict State-Funded and State-Sponsored Travel to Oklahoma (June 1, 2018), https://oag.ca.gov/news/press-releases/attorney-general-becerra-california-will-restrict-state-funded-and-state; Alabama, Kentucky, South Dakota and Texas Added to List of Restricted State Travel (June 22, 2017), https://oag.ca.gov/news/press-releases/attorney-general-becerra-alabama-kentucky-south-dakota-and-texas-added-list; Cal. Dept. of Justice, Frequently Asked Questions (FAQs)—AB 1887: Why Are the States on the Travel Prohibition List?, https://www.oag.ca.gov/ab1887/faqs (citing Kansas, Mississippi, and Tennessee laws).

of the danger of economic warfare between States. See *id.*, at 15–16 (citing The Federalist No. 7 (A. Hamilton)).

The Republic of Texas was an independent nation for 10 years (1836–1846), and the California Republic claimed a similar status for a brief time in 1846. If they were independent nations today, it is entirely possible that their dispute would be the source of considerable international tension. As sovereign nations, they might resolve their dispute by diplomacy, by submitting it to international arbitration, or by self-help measures. When they entered the Union, these two behemoths relinquished the full measure of sovereign power that they once possessed, see *Franchise Tax Bd.*, 587 U. S., at 245–247, but they acquired the right to have their disputes with other States adjudicated by the Nation's highest court.

The Court now denies Texas that right. It will not even permit the filing of Texas's bill of complaint. This understanding of our exclusive original jurisdiction should be reexamined. At a minimum, we should note probable jurisdiction and receive briefing and argument on the question. Texas raises novel constitutional claims, arguing that California's travel ban violates the Privileges and Immunities Clause, U. S. Const., Art. IV, § 2, cl. 1, the Commerce Clause, Art. I, § 8, cl. 3, and the Equal Protection Clause, Amdt. 14, § 1. I express no view regarding any of those claims, but I respectfully dissent from the Court's refusal even to permit the filing of Texas's complaint.

No. 20–429. American Medical Assn. et al. *v.* Becerra, Secretary of Health and Human Services, et al.;

No. 20–454. Becerra, Secretary of Health and Human Services, et al. *v.* Mayor and City Council of Baltimore; and

No. 20–539. Oregon et al. *v.* Becerra, Secretary of Health and Human Services, et al. C. A. 9th Cir. [Certiorari granted *sub nom.* in No. 20–429, *American Medical Assn.* v. *Cochran*; in No. 20–454, *Cochran* v. *Mayor and City Council of Baltimore*; in No. 20–539, *Oregon* v. *Cochran*, 592 U. S. p. 1262.] The Acting Solicitor General is directed to file a letter brief addressing the following question: Whether the Government intends to continue to enforce the challenged rule and regulations outside the State of Maryland until the completion of notice and comment; and, if further litigation is brought against the challenged rule and regulations outside of Maryland, how the Government would intend to respond. Brief, not to exceed three pages, is to be filed by Monday, May 3, 2021. Nonfederal parties and proposed intervenors may submit any responses in letter briefs, not to exceed three pages each, by Monday, May 10, 2021.

No. 20–994. Volkswagen Group of America, Inc., et al. *v.* Environmental Protection Commission of Hillsborough County, Florida, et al. C. A. 9th Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States. Justice Breyer took no part in the consideration of this petition.

No. 20–7599. Tucker *v.* McDonough, Secretary of Veterans Affairs. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until May 17, 2021, within which to pay the docketing fee required by this Court's Rule 38(a).

No. 20–7211. In re Dale;
No. 20–7597. In re Peel; and
No. 20–7603. In re Rutherford. Petitions for writs of mandamus denied.

No. 20–1145. In re Arunachalam. Petition for writ of mandamus denied. The Chief Justice took no part in the consideration or decision of this petition.

Certiorari Granted

No. 20–804. Houston Community College System *v.* Wilson. C. A. 5th Cir. Certiorari granted. Reported below: 955 F. 3d 490.

No. 20–827. United States *v.* Husayn, aka Zubaydah, et al. C. A. 9th Cir. Certiorari granted. Reported below: 938 F. 3d 1123.

No. 20–843. New York State Rifle & Pistol Assn., Inc., et al. *v.* Corlett, Superintendent of New York State Police, et al. C. A. 2d Cir. Certiorari granted limited to the following question: "Whether the State's denial of petitioners' applications for concealed-carry licenses for self-defense violated the Second Amendment." Reported below: 818 Fed. Appx. 99.

Certiorari Denied

No. 19–1194. Jiahao Kuang et al. *v.* Department of Defense et al. C. A. 9th Cir. Certiorari denied. Reported below: 778 Fed. Appx. 418.

No. 20–748. PHI Air Medical, LLC *v.* Texas Mutual Insurance Co. et al. Sup. Ct. Tex. Certiorari denied. Reported below: 610 S. W. 3d 839.

No. 20–819. Mai *v.* United States et al. C. A. 9th Cir. Certiorari denied. Reported below: 952 F. 3d 1106.

No. 20–837. Bakor *v.* Garland, Attorney General. C. A. 8th Cir. Certiorari denied. Reported below: 958 F. 3d 732.

No. 20–889. Sherwin-Williams Co. *v.* Delaware County, Pennsylvania, et al. C. A. 3d Cir. Certiorari denied. Reported below: 968 F. 3d 264.

No. 20–907. SFR Investments Pool 1, LLC *v.* Federal Home Loan Mortgage Corporation et al. (Reported below: 810 Fed. Appx. 589); and Bourne Valley Court Trust *v.* Wells Fargo Bank, N. A. (810 Fed. Appx. 492). C. A. 9th. Cir. Certiorari denied.

No. 20–908. SFR Investments Pool 1, LLC *v.* M&T Bank et al. C. A. 9th Cir. Certiorari denied. Reported below: 963 F. 3d 854.

No. 20–953. Ellis *v.* Liberty Life Assurance Company of Boston. C. A. 10th Cir. Certiorari denied. Reported below: 958 F. 3d 1271.

No. 20–1132. Moore et al. *v.* Tennessee. Ct. Crim. App. Tenn. Certiorari denied.

No. 20–1146. Smith *v.* PacerMonitor, LLC, et al. C. A. 10th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 940.

No. 20–1147. Smallwood *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 20–1150. Haynes et al. *v.* Central States, Southeast and Southwest Areas Health and Welfare Fund et al. C. A. 7th Cir. Certiorari denied. Reported below: 966 F. 3d 655.

No. 20–1156. Olefsky *v.* Illinois Department of Financial and Professional Regulation et al. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2020 IL App (1st) 191059–U.

No. 20–1169. Haynes et al. *v.* World Wrestling Entertainment, Inc. C. A. 2d Cir. Certiorari denied. Reported below: 827 Fed. Appx. 3.

No. 20–1226. Vaughn *v.* Arkansas. Sup. Ct. Ark. Certiorari denied. Reported below: 2020 Ark. 313, 608 S. W. 3d 569.

No. 20–1264. Fusion IV Pharmaceuticals, Inc., dba Axia Pharmaceutical, et al. *v.* Sodergren. C. A. 9th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 438.

No. 20–1278. Johnson et ux. *v.* JPMorgan Chase Bank, N. A. Ct. App. Ariz. Certiorari denied.

No. 20–1292. Parts Galore L. L. C. et al. *v.* Harrison. C. A. 6th Cir. Certiorari denied. Reported below: 826 Fed. Appx. 517.

No. 20–1296. Skipper *v.* A&M Dockside Repair, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 829 Fed. Appx. 1.

No. 20–1338. Li Li *v.* J. C. Penney Co., Inc. C. A. 5th Cir. Certiorari denied.

No. 20–1341. Smilowitz *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 974 F. 3d 155.

No. 20–1344. Maehr *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 780.

No. 20–1350. Go New York Tours, Inc. *v.* Gray Line New York Tours, Inc., et al. C. A. 2d Cir. Certiorari denied. Reported below: 831 Fed. Appx. 584.

No. 20–1361. Heisler, Individually and as the Executrix of the Succession of Heisler *v.* Girod LoanCo, LLC (three judgments). Sup. Ct. La. Certiorari denied. Reported below: 2020–00643 (La. 1/20/21), 308 So. 3d 1162 (first judgment); 2020–01130 (La. 1/20/21), 308 So. 3d 1163 (second judgment); 2020–01324 (La. 1/20/21), 308 So. 3d 1163 (third judgment).

No. 20–1366. Gomez-Arzate *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 981 F. 3d 832.

No. 20–1371. Posey *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 20–6359. Ybaben *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 253.

No. 20–6374. Brown *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 818.

No. 20–6668. Zamarripa *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 20–6756. Wallace *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 20–6799. Chanthakoummane *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 20–6876. Tollette *v.* Ford, Warden. C. A. 11th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 361.

No. 20–7184. Wagner *v.* Scarborough et al. C. A. 5th Cir. Certiorari denied. Reported below: 831 Fed. Appx. 143.

No. 20–7191. Shuler *v.* Lassiter et al. C. A. 4th Cir. Certiorari denied.

No. 20–7196. Rasnick *v.* Dickenson County Department of Social Services. Sup. Ct. Va. Certiorari denied.

No. 20–7212. Davenport *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 20–7219. Westbrook *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 20–7222. Cormier *v.* Riverside County District Attorney et al. C. A. 9th Cir. Certiorari denied. Reported below: 834 Fed. Appx. 419.

No. 20–7225. Rigsby *v.* Colorado. Sup. Ct. Colo. Certiorari denied. Reported below: 471 P. 3d 1068.

No. 20–7227. Conner *v.* Indiana. Ct. App. Ind. Certiorari denied. Reported below: 146 N. E. 3d 343.

No. 20–7236. Boyd *v.* Radtke, Warden. C. A. 7th Cir. Certiorari denied.

No. 20–7239. Hung Linh Hoang *v.* Madden, Warden. C. A. 9th Cir. Certiorari denied.

No. 20–7245. Kerr *v.* Collier, Judge, Court of Common Pleas of Ohio, Henry County (Reported below: 159 Ohio St. 3d 319, 2020-Ohio-457, 150 N. E. 3d 909); and Kerr *v.* Kerr Buildings, Inc. (157 Ohio St. 3d 1562, 2020-Ohio-313, 138 N. E. 3d 1154). Sup. Ct. Ohio. Certiorari denied.

No. 20–7248. Page *v.* Inch, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 20–7249. Miles *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2020 IL App (1st) 171258, 161 N. E. 3d 1021.

No. 20–7261. Redmond *v.* United States Court of Appeals for the Fifth Circuit. C. A. 5th Cir. Certiorari denied.

No. 20–7264. Sonnenberg *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 260.

No. 20–7271. Boyce *v.* Ohio. Ct. App. Ohio, 2d App. Dist., Clark County. Certiorari denied. Reported below: 2020-Ohio-3573.

No. 20–7315. Owens *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 162 Ohio St. 3d 596, 2020-Ohio-4616, 166 N. E. 3d 1142.

No. 20–7331. Martin *v.* Vanihel, Warden (two judgments). C. A. 7th Cir. Certiorari denied.

No. 20–7332. Laster *v.* Georgia et al. C. A. 11th Cir. Certiorari denied.

No. 20–7334. Carr *v.* Saul, Commissioner of Social Security. C. A. 5th Cir. Certiorari denied.

No. 20–7347. Tarver *v.* Inch, Secretary, Florida Department of Corrections. Sup. Ct. Fla. Certiorari denied.

No. 20–7401. Brandon *v.* Forshey, Warden. C. A. 6th Cir. Certiorari denied.

No. 20–7431. Wint, By and Through His Next Friend, Wint *v.* Bradshaw, Sheriff, Palm Beach County, Florida, et al. C. A. 11th Cir. Certiorari denied. Reported below: 842 Fed. Appx. 468.

No. 20–7442. Shalash *v.* Gray, Warden. C. A. 6th Cir. Certiorari denied.

No. 20–7454. Manuel *v.* Inch, Secretary, Florida Department of Corrections. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 308 So. 3d 599.

No. 20–7492. Roundtree *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 136.

No. 20–7505. Gaskins *v.* West Virginia. Sup. Ct. App. W. Va. Certiorari denied.

No. 20–7511. Espinoza *v.* Montgomery, Acting Warden. C. A. 9th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 217.

No. 20–7543. Real-Alomar *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 20–7544. Dominguez *v.* Williams et al. C. A. 9th Cir. Certiorari denied.

No. 20–7547. Martinez *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 832 Fed. Appx. 432.

No. 20–7548. Luster *v.* Trate, Warden. C. A. 3d Cir. Certiorari denied. Reported below: 836 Fed. Appx. 78.

No. 20–7554. Jordan *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 227.

No. 20–7563. Udoh *v.* Dooley, Warden. C. A. 8th Cir. Certiorari denied.

No. 20–7564. Udoh *v.* United States District Court for the District of Minnesota. C. A. 8th Cir. Certiorari denied.

No. 20–7580. Garcia *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 20–7586. Blough *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 832 Fed. Appx. 961.

No. 20–7591. Perales-Perez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 828 Fed. Appx. 208.

No. 20–7593. Clarke *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 979 F. 3d 82.

No. 20–7594. Williams *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 834 Fed. Appx. 6.

No. 20–7598. Thomas *v.* Nicklaus, Warden. C. A. 7th Cir. Certiorari denied.

No. 20–7608. Kazeem *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 144.

No. 20–7619. Powers *v.* Scott. C. A. 7th Cir. Certiorari denied.

No. 20–7624. Martin *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 225.

No. 20–7635. Biron *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 20–7636. Barnes *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 20–7639. Harris *v.* Pacheco, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 829 Fed. Appx. 331.

No. 20–7640. Garner *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 20–7652. Colton *v.* Terris, Warden. C. A. 6th Cir. Certiorari denied.

No. 20–1137. California Parents for the Equalization of Educational Materials *v.* Torlakson et al. C. A. 9th Cir. Motion of Shree Shakti Mandir of Atlanta et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Justice Breyer took no part in the consideration or decision of this motion and this petition. Reported below: 973 F. 3d 1010.

No. 20–1259. Protect Our Parks, Inc., et al. *v.* City of Chicago, Illinois, et al. C. A. 7th Cir. Certiorari denied.

Justice Barrett took no part in the consideration or decision of this petition. Reported below: 971 F. 3d 722.

No. 20–1352. Miles *v.* United States. C. A. 10th Cir. Certiorari denied. Justice Gorsuch took no part in the consideration or decision of this petition. Reported below: 836 Fed. Appx. 678.

No. 20–7233. Bumphus *v.* Unique Personnel Consultants et al. C. A. 7th Cir. Certiorari denied. Justice Barrett took no part in the consideration or decision of this petition. Reported below: 805 Fed. Appx. 427.

No. 20–7629. Martin *v.* United States. C. A. 3d Cir. Certiorari denied. Justice Alito took no part in the consideration or decision of this petition.

Rehearing Denied

No. 20–752. Davis *v.* California, 592 U. S. 1264;
No. 20–756. Baylor *v.* Eto, fka Baylor, 592 U. S. 1264;
No. 20–766. Archer *v.* Winn Dixie Stores, Inc., et al., 592 U. S. 1264;
No. 20–771. Debera P. *v.* Maine Department of Health and Human Services, 592 U. S. 1265;
No. 20–820. Jackson *v.* Wells Fargo Home Mortgage, 592 U. S. 1266;
No. 20–931. Hillier *v.* Central Intelligence Agency et al., 592 U. S. 1303;
No. 20–5764. Berryman *v.* Wong, Warden, 592 U. S. 1270;
No. 20–6041. Perry *v.* United States, 592 U. S. 1110;
No. 20–6796. Sanchez *v.* Inch, Secretary, Florida Department of Corrections, et al., 592 U. S. 1281;
No. 20–6801. Palacio *v.* Sullivan, 592 U. S. 1281; and
No. 20–7292. Staszak *v.* United States, 592 U. S. 1357. Petitions for rehearing denied.

No. 20–7115. Carter *v.* Lawrence, Warden, 592 U. S. 1314. Petition for rehearing denied. Justice Barrett took no part in the consideration or decision of this petition.

April 27, 2021

Miscellaneous Order

No. 20A160. Rolls-Royce PLC *v.* Servotronics, Inc. D. C. S. C. Application for stay, presented to The Chief Justice, and by him referred to the Court, denied. JUSTICE ALITO took no part in the consideration or decision of this application.

APRIL 29, 2021

Dismissal Under Rule 46

No. 20–1460. CRUZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 974 F. 3d 320.

MAY 3, 2021

Appointment of Marshal

It is ordered that Gail A. Curley be appointed Marshal of this Court, effective June 21, 2021.

Certiorari Granted—Vacated and Remanded

No. 19–250. OKLAHOMA *v.* JOHNSON. Ct. Crim. App. Okla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Jones* v. *Mississippi*, 593 U. S. 98 (2021). Reported below: 2019 OK CR 9, 457 P. 3d 1089.

No. 19–507. PUBLISHERS BUSINESS SERVICES, INC., ET AL. *v.* FEDERAL TRADE COMMISSION. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *AMG Capital Management, LLC* v. *FTC*, 593 U. S. 67 (2021). Reported below: 748 Fed. Appx. 735.

No. 19–720. UNITED STATES *v.* BRIONES. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Jones* v. *Mississippi*, 593 U. S. 98 (2021). Reported below: 929 F. 3d 1057.

No. 19–1208. YANEZ-PENA *v.* GARLAND, ATTORNEY GENERAL. C. A. 5th Cir. Reported below: 952 F. 3d 239;

No. 19–1234. BUN CCHAY CHEAT *v.* GARLAND, ATTORNEY GENERAL. C. A. 6th Cir.;

No. 19–1300. JIAN CHEN *v.* GARLAND, ATTORNEY GENERAL. C. A. 6th Cir. Reported below: 791 Fed. Appx. 597;

No. 19–1316. GARCIA-ROMO *v.* GARLAND, ATTORNEY GENERAL. C. A. 6th Cir. Reported below: 940 F. 3d 192;

No. 20–45. KHAYTEKOV *v.* GARLAND, ATTORNEY GENERAL. C. A. 6th Cir. Reported below: 794 Fed. Appx. 497;

No. 20–179. HERNANDEZ-MALDONADO *v.* GARLAND, ATTORNEY GENERAL. C. A. 6th Cir.;

No. 20–268. ARGUETA-AYALA *v.* GARLAND, ATTORNEY GENERAL. C. A. 5th Cir.;

No. 20–517. FIGUEROA-DIAZ *v.* GARLAND, ATTORNEY GENERAL. C. A. 5th Cir. Reported below: 812 Fed. Appx. 278;

No. 20–709. FUENTES-ANGEL *v.* GARLAND, ATTORNEY GENERAL. C. A. 5th Cir.;

No. 20–832. NUNEZ CASTRO *v.* GARLAND, ATTORNEY GENERAL. C. A. 6th Cir.;

No. 20–1021. NAVARRETE-LOPEZ *v.* GARLAND, ATTORNEY GENERAL. C. A. 5th Cir. Reported below: 826 Fed. Appx. 412;

No. 20–1070. RICO OLVERA *v.* GARLAND, ATTORNEY GENERAL. C. A. 5th Cir. Reported below: 802 Fed. Appx. 862; and

No. 20–6152. LUQUIN-CORONEL *v.* GARLAND, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Niz-Chavez* v. *Garland*, 593 U. S. 155 (2021).

Certiorari Dismissed

No. 20–7263. ROBINSON *v.* YEE. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 20–7323. MORETTI *v.* BOROUGH OF PARAMUS, NEW JERSEY. Super. Ct. N. J., App. Div. 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*). JUSTICE ALITO took no part in the consideration or decision of this motion and this petition.

Miscellaneous Orders

No. 20M73. QUINTANA *v.* MULHERON, WARDEN, ET AL.; and

No. 20M75. Kunkle *v.* Shapiro, Attorney General of Pennsylvania, et al. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 20M74. Under Seal *v.* Virginia Board of Medicine. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record denied.

No. 20–891. American Axle & Manufacturing, Inc. *v.* Neapco Holdings LLC et al. C. A. Fed. Cir.; and

No. 20–905. Independent School District No. 283 *v.* E. M. D. H., a Minor, By and Through Her Parents and Next Friends, L. H. et al. C. A. 8th Cir. The Acting Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 20–7715. In re DeCaro. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 20–7354. In re Robinson. Petition for writ of mandamus denied.

Certiorari Denied

No. 17–1511. Newton *v.* Indiana. Ct. App. Ind. Certiorari denied. Reported below: 19–62 (La. App. 5 Cir. 4/23/20), 297 So. 3d 190.

No. 19–399. Garcia *v.* North Dakota. Sup. Ct. N. D. Certiorari denied. Reported below: 2019 ND 103, 925 N. W. 2d 442.

No. 20–356. Garland, Attorney General *v.* Banuelos-Galviz. C. A. 10th Cir. Certiorari denied. Reported below: 953 F. 3d 1176.

No. 20–397. Garland, Attorney General *v.* Portillo Martinez. C. A. 10th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 493.

No. 20–554. Smith *v.* McKinney, Warden, et al. C. A. 8th Cir. Certiorari denied. Reported below: 954 F. 3d 1075.

No. 20–855. Maryland Shall Issue, Inc., et al. *v.* Hogan, Governor of Maryland. C. A. 4th Cir. Certiorari denied. Reported below: 963 F. 3d 356.

No. 20–861. Fry *v.* Rand Construction Corp. C. A. 4th Cir. Certiorari denied. Reported below: 964 F. 3d 239.

No. 20–866. Allen et al. *v.* Wells Fargo & Co. et al. C. A. 8th Cir. Certiorari denied. Reported below: 967 F. 3d 767.

No. 20–881. Tran et al. *v.* City of Holmes Beach, Florida, et al. C. A. 11th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 911.

No. 20–923. Garland, Attorney General *v.* Acosta-Pena (Reported below: 812 Fed. Appx. 796); Garland, Attorney General *v.* Artur (819 Fed. Appx. 618); Garland, Attorney General *v.* Moreno-Lopez (818 Fed. Appx. 824); Garland, Attorney General *v.* Jimenez Juarez (821 Fed. Appx. 930); and Garland, Attorney General *v.* Magana Arias (821 Fed. Appx. 933). C. A. 10th Cir. Certiorari denied.

No. 20–989. City of Newark, New Jersey *v.* Fraternal Order of Police, Newark Lodge No. 12. Sup. Ct. N. J. Certiorari denied. Reported below: 244 N. J. 75, 236 A. 3d 965.

No. 20–999. Lloyd Industries, Inc. *v.* Watson. C. A. 3d Cir. Certiorari denied. Reported below: 816 Fed. Appx. 709.

No. 20–1002. Cox *v.* Wilson. C. A. 10th Cir. Certiorari denied. Reported below: 971 F. 3d 1159.

No. 20–1012. Guenther *v.* Lockheed Martin Corp. et al. C. A. 9th Cir. Certiorari denied. Reported below: 972 F. 3d 1043.

No. 20–1014. Organic Cannabis Foundation, LLC, dba Organicann Health Center *v.* Commissioner of Internal Revenue; and

No. 20–1031. Northern California Small Business Assistants, Inc. *v.* Commissioner of Internal Revenue. C. A. 9th Cir. Certiorari denied. Reported below: 962 F. 3d 1082.

No. 20–1152. Luna et al. *v.* U. S. Bank N. A. C. A. 8th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 672.

No. 20–1157. Yaney *v.* Superior Court of California, Riverside County, et al. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 20–1168. Marcus & Millichap Real Estate Investment Services of Nevada, Inc., et al. *v.* Chandra et al. C. A. 9th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 597.

No. 20–1171. Madison *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 160 Ohio St. 3d 232, 2020-Ohio-3735, 155 N. E. 3d 867.

No. 20–1176. Trustees of the Thomas E. Proctor Heirs Trust *v.* Keta Gas & Oil Co. et al. Super. Ct. Pa. Certiorari denied. Reported below: 225 A. 3d 1140.

No. 20–1185. Edwards *v.* Solomon & Solomon P. C. C. A. 11th Cir. Certiorari denied. Reported below: 829 Fed. Appx. 425.

No. 20–1186. Dynasty Group, Inc. *v.* Smith, Trustee for Bankruptcy Estate of Heritage Real Estate Investment Corp. Sup. Ct. Ala. Certiorari denied.

No. 20–1188. Thomason *v.* Beneficial Financial I Inc. Sup. Ct. Idaho. Certiorari denied.

No. 20–1192. Fouse et ux. *v.* Saratoga Partners L. P. et al. Sup. Ct. Pa. Certiorari denied. Reported below: 662 Pa. 200, 238 A. 3d 1198.

No. 20–1194. Lopez *v.* Corona Police Department et al. C. A. 9th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 113.

No. 20–1196. McClellan *v.* Ohio. Ct. App. Ohio, 4th App. Dist., Highland County. Certiorari denied.

No. 20–1201. Eisenberg *v.* Swain. Ct. App. D. C. Certiorari denied. Reported below: 233 A. 3d 13.

No. 20–1208. Agha-Khan *v.* Pacific Community Mortgage, Inc., et al. C. A. 9th Cir. Certiorari denied.

No. 20–1217. Lak *v.* California et al. C. A. 9th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 730.

No. 20–1235. Burgoyne, LLC *v.* Chicago Terminal Railroad Co. et al. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2020 IL App (1st) 190098, 169 N. E. 3d 815.

No. 20–1243. Burk *v.* Ducey, Governor of Arizona, et al. Sup. Ct. Ariz. Certiorari denied.

No. 20–1245. Vasquez *v.* Massachusetts. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 485 Mass. 405, 150 N. E. 3d 723.

No. 20–1256. French *v.* United States; and
No. 20–7661. Russell *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 977 F. 3d 114.

No. 20–1268. Suarez *v.* Aanonsen. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 306 So. 3d 294.

No. 20–1271. Blanton *v.* McDonough, Secretary of Veterans Affairs. C. A. Fed. Cir. Certiorari denied. Reported below: 823 Fed. Appx. 958.

No. 20–1308. White *v.* Super Gasoline, Inc., et al. Sup. Ct. Va. Certiorari denied.

No. 20–1359. Superama Corp., Inc., dba USA Sumo *v.* Tokyo Broadcasting System Television, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 830 Fed. Appx. 821.

No. 20–1360. Hubbard *v.* State Bar of California. Sup. Ct. Cal. Certiorari denied.

No. 20–1382. Gettinger et al. *v.* Picard et al. C. A. 2d Cir. Certiorari denied. Reported below: 976 F. 3d 184.

No. 20–1393. Keehn *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 824 Fed. Appx. 922.

No. 20–1421. Ballerstein et al. *v.* McHatten et al. Sup. Jud. Ct. Me. Certiorari denied.

No. 20–5686. Hulsey *v.* Saul, Commissioner of Social Security. C. A. 9th Cir. Certiorari denied. Reported below: 794 Fed. Appx. 659.

No. 20–6407. Gomez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 338.

No. 20–6428. Herron *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 762 Fed. Appx. 25.

No. 20–6664. Lepe Moran *v.* Garland, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 960 F. 3d 1158.

No. 20–6679. Dortley *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 303 So. 3d 931.

No. 20–6914. Petersen *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied.

No. 20–6957. Centofanti *v.* Neven, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 555.

No. 20–7258. Horn *v.* Federal National Mortgage Association et al. C. A. 4th Cir. Certiorari denied. Reported below: 826 Fed. Appx. 298.

No. 20–7279. Vue *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 20–7281. Wright *v.* Cardenas et al. C. A. 11th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 612.

No. 20–7293. Safford *v.* Florida. Dist. Ct. App. Fla., 2d Dist. Certiorari denied.

No. 20–7297. Sturgis *v.* Maryland. Ct. Sp. App. Md. Certiorari denied. Reported below: 246 Md. App. 788.

No. 20–7298. Bunn *v.* Wisconsin. Ct. App. Wis. Certiorari denied. Reported below: 2020 WI App 70, 394 Wis. 2d 524, 950 N. W. 2d 694.

No. 20–7299. Adkisson *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 136 Nev. 774, 466 P. 3d 1289.

No. 20–7303. Barrera *v.* Newsome et al. C. A. 6th Cir. Certiorari denied.

No. 20–7308. Kelsey *v.* New York. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 174 App. Div. 3d 962, 107 N. Y. S. 3d 150.

No. 20–7309. Maldonado *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 237 A. 3d 1079.

No. 20–7311. Matthews *v.* Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 2019–01636 (La. 8/14/20), 307 So. 3d 1038.

No. 20–7316. Luis Morales *v.* Sherman, Warden. C. A. 9th Cir. Certiorari denied.

No. 20–7317. Chester *v.* Cain, Commissioner, Mississippi Department of Corrections. C. A. 5th Cir. Certiorari denied.

No. 20–7318. Klinger *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 20–7321. Douglas *v.* Superior Court of California, Los Angeles County. C. A. 9th Cir. Certiorari denied.

No. 20–7328. Matias-Martinez *v.* Williams, Executive Director, Colorado Department of Corrections, et al. C. A. 10th Cir. Certiorari denied. Reported below: 827 Fed. Appx. 883.

No. 20–7329. Knight *v.* Nebraska. Ct. App. Neb. Certiorari denied. Reported below: 28 Neb. App. ——.

No. 20–7335. Carr *v.* Gonzalez, Sheriff, Harris County, Texas, et al. C. A. 5th Cir. Certiorari denied. Reported below: 830 Fed. Appx. 739.

No. 20–7337. Thurlow *v.* Edmark, Warden. C. A. 1st Cir. Certiorari denied.

No. 20–7338. Tarver *v.* Shapiro, Attorney General of Pennsylvania, et al. C. A. 3d Cir. Certiorari denied.

No. 20–7344. Davis *v.* Shinn, Director, Arizona Department of Corrections, Rehabilitation and Reentry. C. A. 9th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 892.

No. 20–7350. DeVore *v.* Ohio. Ct. App. Ohio, 5th App. Dist., Richland County. Certiorari denied. Reported below: 2020-Ohio-4668.

No. 20–7374. Alexander *v.* Headley, Warden, et al. C. A. 11th Cir. Certiorari denied.

No. 20–7429. Davis *v.* Shinn, Director, Arizona Department of Corrections, Rehabilitation and Reentry, et al. C. A. 9th Cir. Certiorari denied.

No. 20–7450. Patel *v.* Regents of the University of California. Ct. App. Cal., 2d App. Dist., Div. 8. Certiorari denied.

No. 20–7464. Long *v.* Ohio. Ct. App. Ohio, 6th App. Dist., Wood County. Certiorari denied. Reported below: 2020-Ohio-4090, 157 N. E. 3d 362.

No. 20–7499. Brewer, aka Green *v.* Pollard, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 20–7500. Brown *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 300 So. 3d 332.

No. 20–7561. Pocopanni *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 304 So. 3d 760.

No. 20–7562. Kamme O *v.* Texas A&M University and System et al. C. A. 5th Cir. Certiorari denied.

No. 20–7570. Frazier *v.* Slatery, Attorney General of Tennessee, et al. C. A. 6th Cir. Certiorari denied.

No. 20–7572. Holden *v.* Nevada et al. C. A. 9th Cir. Certiorari denied.

No. 20–7582. Green *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 20–7628. Johnson *v.* Mississippi. Ct. App. Miss. Certiorari denied. Reported below: 311 So. 3d 1161.

No. 20–7632. Hixon *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 838 Fed. Appx. 961.

No. 20–7633. Alford *v.* Inch, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 20–7647. Muho *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 978 F. 3d 1212.

No. 20–7655. Bershan *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 845 Fed. Appx. 37.

No. 20–7656. Monson *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 20–7657. MacLloyd *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 20–7659. Soriano Nunez *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 835 Fed. Appx. 655.

No. 20–7663. Watson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 852 Fed. Appx. 164.

No. 20–7699. Horn *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 303 So. 3d 1285.

No. 19–825. Federal Trade Commission *v.* Credit Bureau Center, LLC, et al. C. A. 7th Cir. Certiorari denied. Justice Barrett took no part in the consideration or decision of this petition. Reported below: 937 F. 3d 764.

No. 20–559. Doe *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 815 Fed. Appx. 592.

Justice Thomas, dissenting.

Petitioner alleges that she was raped by a fellow cadet while she was a student at the U. S. Military Academy at West Point. She sued the United States under the Federal Tort Claims Act, claiming that West Point's sexual assault policies were inadequate to protect students from sexual violence. Under the plain text of the Act, petitioner's status as a West Point cadet should have posed no bar to litigation. But 70 years ago, this Court made the policy judgment that members of the military should not be able to sue for injuries incident to military service. See *Feres* v. *United States*, 340 U. S. 135 (1950). Relying on *Feres*, the Second Circuit held that sovereign immunity barred petitioner's claims, even if she could have brought these same claims had she been a civilian contractor employed by West Point instead of a student.

As I have previously explained, this approach has little justification. The Act " 'renders the United States liable to *all* persons, including servicemen, injured by the negligence of Government employees.' " *Lanus* v. *United States*, 570 U. S. 932 (2013) (Thomas, J., dissenting from denial of certiorari) (quoting *United States* v. *Johnson*, 481 U. S. 681, 693 (1987) (Scalia, J., dissenting));

see also *Daniel* v. *United States*, 587 U. S. 1020, 1020–1021 (2019) (THOMAS, J., dissenting from denial of certiorari). Emphasizing its breadth, the law contains a narrow carve out for military-related claims: those "arising out of . . . combatant activities . . . during time of war." 28 U. S. C. § 2680(j). This single military exception involving "combatant activities" clearly does not apply here. And, other than this specific exception, the law does not " 'preclud[e] . . . suits brought by servicemen' "—at least not because of their military status. *Lanus*, 570 U. S., at 932. *Feres* was wrongly decided; and this case was wrongly decided as a result.

We should grant certiorari to correct this error. The *Feres* Court's foray into judicial legislating has been met with " 'widespread, almost universal criticism.' " *Johnson*, 481 U. S., at 700 (Scalia, J., dissenting). And it is easy to see why. Under our precedent, if two Pentagon employees—one civilian and one a servicemember—are hit by a bus in the Pentagon parking lot and sue, it may be that only the civilian would have a chance to litigate his claim on the merits. Cf. *Frankel* v. *United States*, 810 Fed. Appx. 176, 180–182 (CA4 2020) (*per curiam*) (*Feres* barred claim of servicemember who was struck by a vehicle); *Newton* v. *Lee*, 677 F. 3d 1017, 1030 (CA10 2012) (*Feres* does not bar claim by "a purely civilian employee of the military"). Nothing in the text of the Act requires this disparate treatment. Nor is there any background rule that federal bus drivers owe a greater duty of care toward workers who are civilian than those who are military.

At a minimum, we should take up this case to clarify the scope of the immunity we have created. Without any statutory text to serve as a guide, lower courts are understandably confused about what counts as an injury "incident" to military service. One might be surprised to learn, for example, that *Feres* sometimes bars claims of a drunken servicemember who drowns, except when it does not. Compare *Morey* v. *United States*, 903 F. 2d 880, 881 (CA1 1990), with *Dreier* v. *United States*, 106 F. 3d 844, 845–846 (CA9 1996). Or, to discover that *Feres* apparently forecloses a claim for a servicemember's injury while waterskiing because the recreational boat belonged to the military, but not for an injury while attending a rugby event caused by a servicemember's negligent operation of an Army van. Compare *McConnell* v. *United States*, 478 F. 3d 1092, 1093–1094 (CA9 2007), with *Whitley* v. *United States*, 170 F. 3d 1061, 1068–1070 (CA11 1999).

And like Judge Chin in dissent, one might be concerned to find out that a student's *rape* is considered an injury incident to military service. See *Doe* v. *Hagenbeck*, 870 F. 3d 36, 51, 58–62 (CA2 2017) ("[I]n my view Doe's injuries did not arise 'incident to military service' "). But that is exactly what the court held below. See 815 Fed. Appx. 592, 595 (CA2 2020).

Perhaps the Court is hesitant to take up this issue at all because it would require fiddling with a 70-year-old precedent that is demonstrably wrong. But if the *Feres* doctrine is so wrong that we cannot figure out how to rein it in, then the better answer is to bid it farewell. There is precedent for that approach. See, *e. g.*, *Trump* v. *Hawaii*, 585 U. S. 667, 710 (2018) (overruling *Korematsu* v. *United States*, 323 U. S. 214 (1944)); *Leegin Creative Leather Products, Inc.* v. *PSKS, Inc.*, 551 U. S. 877, 882 (2007) (overruling *Dr. Miles Medical Co.* v. *John D. Park & Sons Co.*, 220 U. S. 373 (1911)); *Lapides* v. *Board of Regents of Univ. System of Ga.*, 535 U. S. 613, 623 (2002) (overruling *Ford Motor Co.* v. *Department of Treasury of Ind.*, 323 U. S. 459 (1945)); *Exxon Corp.* v. *Central Gulf Lines, Inc.*, 500 U. S. 603, 612 (1991) (overruling *Minturn* v. *Maynard*, 17 How. 477 (1855)); *Malloy* v. *Hogan*, 378 U. S. 1, 2, 6 (1964) (overruling *Twining* v. *New Jersey*, 211 U. S. 78 (1908)); *Brown* v. *Board of Education*, 347 U. S. 483, 494–495 (1954) (overruling *Plessy* v. *Ferguson*, 163 U. S. 537 (1896)); *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 79–80 (1938) (overruling *Swift* v. *Tyson*, 16 Pet. 1 (1842)).

We should follow it.

No. 20–1165. Arunachalam *v.* Citigroup, Inc., et al. C. A. Fed. Cir. Certiorari denied. The Chief Justice took no part in the consideration or decision of this petition.

No. 20–1267. Byers *v.* Commissioner of Internal Revenue. C. A. D. C. Cir. Certiorari denied. Justice Kavanaugh took no part in the consideration or decision of this petition. Reported below: 805 Fed. Appx. 7.

No. 20–7626. Miller *v.* United States. C. A. D. C. Cir. Certiorari denied. Justice Kavanaugh took no part in the consideration or decision of this petition. Reported below: 953 F. 3d 804.

Rehearing Denied

No. 19–8650. Campbell *v.* Maryland, 592 U. S. 1169;
No. 20–849. P. F. *v.* J. S. et al., 592 U. S. 1303;

No. 20–6477. Ardaneh *v.* Massachusetts, 592 U. S. 1272;

No. 20–6497. Bridges *v.* Gray, Warden, 592 U. S. 1272;

No. 20–6617. In re Romain, 592 U. S. 1261; and

No. 20–6829. Buttercase *v.* Nebraska, 592 U. S. 1282. Petitions for rehearing denied.

No. 19–8736. Clark *v.* Washington, 592 U. S. 939; and

No. 20–6595. Brockington *v.* Salem United Methodist Church et al., 592 U. S. 1274. Motions of petitioners for leave to file petitions for rehearing denied.

May 17, 2021

Dismissal Under Rule 46

No. 20–429. American Medical Assn. et al. *v.* Becerra, Secretary of Health and Human Services, et al.;

No. 20–454. Becerra, Secretary of Health and Human Services, et al. *v.* Mayor and City Council of Baltimore; and

No. 20–539. Oregon et al. *v.* Becerra, Secretary of Health and Human Services, et al. C. A. 9th Cir. [Certiorari granted *sub nom.* in No. 20–429, *American Medical Assn.* v. *Cochran*; in No. 20–454, *Cochran* v. *Mayor and City Council of Baltimore*; in No. 20–539, *Oregon* v. *Cochran*, 592 U. S. 1262.] The Government has filed a letter brief representing that it will continue enforcing the challenged rule and regulations outside the State of Maryland for as long as they remain operative. If further litigation is brought against the challenged rule and regulations outside of Maryland, the Government represents that it will either oppose that litigation on threshold grounds or seek to hold the litigation in abeyance pending completion of notice and comment. In light of the Government's representations, motions for leave to intervene are denied, and writs of certiorari in Nos. 20–429, 20–454, and 20–539 dismissed under this Court's Rule 46.1. If the Government fails to enforce the challenged rule and regulations outside of Maryland prior to the completion of notice and comment, or if litigation is brought against the challenged rule and regulations outside of Maryland, any aggrieved party may file an application in this Court after seeking relief in the appropriate District Court and Court of Appeals. Justice Thomas, Justice Alito, and Justice Gorsuch would grant the motions for leave to intervene and deny the stipulations to dismiss the petitions.

Certiorari Granted—Vacated and Remanded

No. 20–1047. Alabama et al. *v.* Alabama State Conference of the NAACP et al. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded with instructions to dismiss the case as moot. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950). Reported below: 949 F. 3d 647.

Certiorari Dismissed

No. 20–7445. Allen *v.* SunTrust Bank 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. Reported below: 832 Fed. Appx. 820.

No. 20–7550. Baccus *v.* South Carolina Department of Corrections. 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: 823 Fed. Appx. 207.

No. 20–7693. Wilkins, aka Brown *v.* Joksch et al. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders.

No. 20A156. Vinkov *v.* United States District Court for the Central District of California. D. C. C. D. Cal. Application for stay, addressed to Justice Barrett and referred to the Court, denied.

No. 20M76. Bizzarro *v.* First National Bank. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 20M77. O'Neal *v.* United States. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 20–807. LeDure *v.* Union Pacific Railroad Co. C. A. 7th Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States. Justice Barrett took no part in the consideration or decision of this petition.

No. 20–7821. In re Toth; and
No. 20–7833. In re Wright. Petitions for wrist of habeas corpus denied.

No. 20–1266. In re Moore et al.;
No. 20–7518. In re Stone;
No. 20–7753. In re Johnson; and
No. 20–7789. In re Ciacci. Petitions for writs of mandamus denied.

No. 20–7481. In re Vaidyanathan. Petition for writ of mandamus denied. The Chief Justice took no part in the consideration or decision of this petition.

No. 20–7733. In re Spencer. 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.

No. 20–1297. In re Riley; and
No. 20–7352. In re Rudolph. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Granted

No. 20–1009. Shinn, Director, Arizona Department of Corrections, Rehabilitation and Reentry *v.* Martinez Ramirez (Reported below: 937 F. 3d 1230); and Shinn, Director, Arizona Department of Corrections, Rehabilitation and Reentry, et al. *v.* Jones (943 F. 3d 1211). C. A. 9th Cir. Certiorari granted.

No. 20–1143. Badgerow *v.* Walters et al. C. A. 5th Cir. Certiorari granted. Reported below: 975 F. 3d 469.

No. 19–1392. Dobbs, State Health Officer of the Mississippi Department of Health, et al. *v.* Jackson Women's Health Organization et al. C. A. 5th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 945 F. 3d 265.

Certiorari Denied

No. 20–101. Harris *v.* Maryland. Ct. Sp. App. Md. Certiorari denied. Reported below: 242 Md. App. 655, 219 A. 3d 1.

No. 20–718. Reyes-Romero *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 959 F. 3d 80.

No. 20–745. Lechuga *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 261.

No. 20–773. Khan et al. *v.* Merit Medical Systems Inc. et al.; and

No. 20–1363. Merit Medical Systems, Inc. *v.* Khan et al. C. A. Fed. Cir. Certiorari denied. Reported below: 825 Fed. Appx. 762.

No. 20–791. Eglise Baptiste Bethanie De Ft. Lauderdale, Inc., et al. *v.* Seminole Tribe of Florida et al. C. A. 11th Cir. Certiorari denied. Reported below: 824 Fed. Appx. 680.

No. 20–895. Seldin, Individually and as Trustee of the Selden 2002 Irrevocable Trust, dated October 9, 1993, et al. *v.* Estate of Silverman et al. Sup. Ct. Neb. Certiorari denied. Reported below: 305 Neb. 185, 939 N. W. 2d 768.

No. 20–937. Andrews *v.* New Jersey. Sup. Ct. N. J. Certiorari denied. Reported below: 243 N. J. 447, 234 A. 3d 1254.

No. 20–1048. Moore *v.* Garland, Attorney General. C. A. 2d Cir. Certiorari denied. Reported below: 819 Fed. Appx. 11.

No. 20–1061. Dantzler, Inc., et al. *v.* S2 Services Puerto Rico, LLC, et al. C. A. 1st Cir. Certiorari denied. Reported below: 958 F. 3d 38.

No. 20–1095. Haws *v.* Idaho. Sup. Ct. Idaho. Certiorari denied. Reported below: 167 Idaho 471, 472 P. 3d 576.

No. 20–1110. Sandoz Inc. et al. *v.* Immunex Corp. et al. C. A. Fed. Cir. Certiorari denied. Reported below: 964 F. 3d 1049.

No. 20–1116. Seward *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 967 F. 3d 57.

No. 20–1130. Ericsson Inc. et al. *v.* TCL Communication Technology Holdings Ltd. et al. C. A. Fed. Cir. Certiorari denied. Reported below: 955 F. 3d 1317.

No. 20–1159. Vermont National Telephone Co. *v.* Vermont Department of Taxes. Sup. Ct. Vt. Certiorari denied. Reported below: 2020 VT 83, 213 Vt. 421, 250 A. 3d 567.

No. 20–1213. Mignott et al. *v.* Gardiner. Ct. App. Ga. Certiorari denied.

No. 20–1219. Curry *v.* Mackenzie. Sup. Ct. Ohio. Certiorari denied. Reported below: 160 Ohio St. 3d 1484, 2020-Ohio-5454, 158 N. E. 3d 612.

No. 20–1221. Ramon Ochoa *v.* Rubin. Ct. Civ. App. Okla. Certiorari denied.

No. 20–1231. Smith *v.* Florida Agricultural and Mechanical University Board of Trustees. C. A. 11th Cir. Certiorari denied. Reported below: 831 Fed. Appx. 434.

No. 20–1234. Baptiste et al. *v.* Massachusetts Executive Office of Health and Human Services et al. App. Ct. Mass. Certiorari denied. Reported below: 97 Mass. App. 110, 143 N. E. 3d 1052.

No. 20–1236. Anderson *v.* Clarke, Director, Virginia Department of Corrections. Sup. Ct. Va. Certiorari denied.

No. 20–1242. Endencia *v.* Arce. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 20–1248. Kinzy et al. *v.* First Tennessee Bank, N. A. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2020 IL App (2d) 180799–U.

No. 20–1251. Anderson *v.* Harbor Bank of Maryland. C. A. 4th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 259.

No. 20–1253. Stringer *v.* Storesonline, Inc., et al. Sup. Ct. Miss. Certiorari denied.

No. 20–1254. Rao *v.* Midland Trust Co. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 20–1257. Jensen *v.* West Jordan City, Utah. C. A. 10th Cir. Certiorari denied. Reported below: 968 F. 3d 1187.

No. 20–1265. Moore et al. *v.* Martin-Bragg. Ct. App. Cal., 2d App. Dist., Div. 1. Certiorari denied.

No. 20–1273. Olstowski *v.* Petroleum Analyzer Co. L. P. C. A. 5th Cir. Certiorari denied. Reported below: 969 F. 3d 210.

No. 20–1275. Vesuvius USA Corp. et al. *v.* Phillips. Ct. App. Ohio, 8th App. Dist., Cuyahoga County. Certiorari denied. Reported below: 2020-Ohio-3285.

No. 20–1277. Meyer *v.* Kentucky. Ct. App. Ky. Certiorari denied.

No. 20–1291. WPEM, LLC *v.* SOTI Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 837 Fed. Appx. 773.

No. 20–1299. Clark *v.* City of Williamsburg, Kansas. C. A. 10th Cir. Certiorari denied. Reported below: 844 Fed. Appx. 4.

No. 20–1303. Pappas *v.* Lorintz et al. C. A. 2d Cir. Certiorari denied. Reported below: 832 Fed. Appx. 8.

No. 20–1310. McCann *v.* Wold et al. Sup. Ct. Mont. Certiorari denied. Reported below: 402 Mont. 425, 472 P. 3d 1204.

No. 20–1316. Fling *v.* United States Postal Service et al. C. A. D. C. Cir. Certiorari denied.

No. 20–1329. Trayvilla et al. *v.* Japan Airlines et al. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 178 App. Div. 3d 746, 111 N. Y. S. 3d 224.

No. 20–1335. A. P. *v.* Vermont. Sup. Ct. Vt. Certiorari denied. Reported below: 2020 VT 86, 213 Vt. 291, 246 A. 3d 399.

No. 20–1355. Johnson *v.* Yellen, Secretary of the Treasury. C. A. 7th Cir. Certiorari denied. Reported below: 827 Fed. Appx. 603.

No. 20–1368. Rollo-Carlson, as Trustee for Flackus-Carlson, Deceased *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 971 F. 3d 768.

No. 20–1408. Fernandez *v.* Wharton School of the University of Pennsylvania et al. C. A. 3d Cir. Certiorari denied.

No. 20–1411. Starline Tours of Hollywood, Inc. *v.* EHM Productions, Inc., dba TMZ, et al. C. A. 9th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 773.

No. 20–1414. Uber Technologies, Inc., et al. *v.* Razak et al. C. A. 3d Cir. Certiorari denied. Reported below: 951 F. 3d 137 and 979 F. 3d 192.

No. 20–1416. Neske et al., Individually and as Parents and Natural Guardians of A. N. *v.* New York City Department of Education. C. A. 2d Cir. Certiorari denied. Reported below: 824 Fed. Appx. 81.

No. 20–1418. Cirino *v.* Ocwen Loan Servicing LLC et al. C. A. 9th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 204.

No. 20–1422. 76 Orinda *v.* Moralez. C. A. 9th Cir. Certiorari denied. Reported below: 830 Fed. Appx. 209.

No. 20–1423. Grundstein *v.* Vermont Board of Bar Examiners. Sup. Ct. Vt. Certiorari denied. Reported below: 2020 VT 102, 213 Vt. 528, 251 A. 3d 30.

No. 20–1427. Pacheco Pacheco *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 977 F. 3d 764.

No. 20–1428. Noergaard *v.* Noergaard. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied. Reported below: 57 Cal. App. 5th 841, 271 Cal. Rptr. 3d 905.

No. 20–1439. Loyd *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 20–1441. Beecher *v.* New Jersey; and
No. 20–1442. Stoveken *v.* New Jersey. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 464 N. J. Super. 86, 234 A. 3d 309.

No. 20–1445. Foreman *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 613 S. W. 3d 160.

No. 20–1449. Persaud *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 20–1463. Mortgage Investors Corp. et al. *v.* United States ex rel. Bibby et al. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 3d 1340.

No. 20–1470. Jeffrey *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 175 A. 3d 382.

No. 20–1478. Saul, Commissioner of Social Security *v.* Probst et al. C. A. 4th Cir. Certiorari denied. Reported below: 980 F. 3d 1015.

No. 20–6387. Woodard *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 626.

No. 20–6626. Masalmani *v.* Michigan. Sup. Ct. Mich. Certiorari denied. Reported below: 505 Mich. 1090, 943 N. W. 2d 359.

No. 20–6743. Dussard *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 967 F. 3d 149.

No. 20–6808. Traficante *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 966 F. 3d 99.

No. 20–6822. Berryman *v.* Davis, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 954 F. 3d 1222.

No. 20–6837. Owens *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 818.

No. 20–6840. Darrington *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 20–6841. Jones *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 962 F. 3d 1290.

No. 20–6923. Abbate *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 970 F. 3d 601.

No. 20–6972. Jenkins *v.* Dunn, Commissioner, Alabama Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 963 F. 3d 1248.

No. 20–7030. Love *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 20–7071. Russell *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions

Division. C. A. 5th Cir. Certiorari denied. Reported below: 827 Fed. Appx. 378.

No. 20–7205. Franqui *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 301 So. 3d 152.

No. 20–7228. Pooler *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 302 So. 3d 744.

No. 20–7312. Parker *v.* Pickens et al. C. A. 8th Cir. Certiorari denied. Reported below: 833 Fed. Appx. 656.

No. 20–7351. Shaw *v.* Sacramento County Sheriff's Department et al. C. A. 9th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 553.

No. 20–7356. Spivey *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 20–7357. Johnson *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 20–7358. Harris *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 136 Nev. 817, 468 P. 3d 375.

No. 20–7371. Marsh *v.* Fleming, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 238.

No. 20–7373. Payne *v.* Arizona. Super. Ct. Ariz., Pima County. Certiorari denied.

No. 20–7375. Wooten *v.* Parker, Sheriff, Howard County, Texas, et al. C. A. 5th Cir. Certiorari denied. Reported below: 830 Fed. Appx. 443.

No. 20–7376. Martin *v.* Ohio. C. A. 6th Cir. Certiorari denied.

No. 20–7379. Corujo Mercado *v.* Florida. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 303 So. 3d 1242.

No. 20–7391. Turner *v.* Gray, Warden. C. A. 6th Cir. Certiorari denied.

No. 20–7392. Woodfork *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 20–7396. Calhoun *v.* Walmart Stores East, LP. C. A. 11th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 899.

No. 20–7397. King *v.* Winn, Warden. C. A. 6th Cir. Certiorari denied.

No. 20–7403. Luna *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 20–7407. Solar-Somohano *v.* Coca-Cola Co. et al. C. A. Fed. Cir. Certiorari denied.

No. 20–7411. Jackson *v.* Berean et al. C. A. 6th Cir. Certiorari denied.

No. 20–7420. Kilman *v.* Williams, Executive Director, Colorado Department of Corrections, et al. C. A. 10th Cir. Certiorari denied. Reported below: 831 Fed. Appx. 396.

No. 20–7424. Douglas *v.* Superior Court of California, Los Angeles County. C. A. 9th Cir. Certiorari denied.

No. 20–7426. Williams *v.* Ohio. Ct. App. Ohio, 7th App. Dist., Columbiana County. Certiorari denied. Reported below: 2020-Ohio-4430.

No. 20–7432. Lucien *v.* Texas. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 20–7433. Chaudron *v.* Texas. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 20–7434. Dawes *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 20–7435. Knickerbocker *v.* Wisconsin et al. C. A. 7th Cir. Certiorari denied.

No. 20–7436. Knight *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 306 So. 3d 953.

No. 20–7440. Salazar *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 20–7443. Salu et al. *v.* Miranda et al. C. A. 2d Cir. Certiorari denied. Reported below: 830 Fed. Appx. 341.

No. 20–7455. Jones *v.* Montana. Sup. Ct. Mont. Certiorari denied. Reported below: 398 Mont. 309, 459 P. 3d 841.

No. 20–7462. Kirkland *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 160 Ohio St. 3d 389, 2020-Ohio-4079, 157 N. E. 3d 716.

No. 20–7463. Jackson *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 309 So. 3d 205.

No. 20–7466. Burgett *v.* General Store No. Two Inc. et al. C. A. 8th Cir. Certiorari denied. Reported below: 826 Fed. Appx. 579.

No. 20–7470. Ramon Guerrero *v.* Nevada. Ct. App. Nev. Certiorari denied. Reported below: 136 Nev. 816, 459 P. 3d 240.

No. 20–7478. Lewis *v.* Southern Connecticut State University et al. C. A. 2d Cir. Certiorari denied.

No. 20–7485. Cooper *v.* Chapman, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 970 F. 3d 720.

No. 20–7512. Cox *v.* Nebraska. Sup. Ct. Neb. Certiorari denied. Reported below: 307 Neb. 762, 985 N. W. 2d 395.

No. 20–7513. Jones *v.* New York City Police Department et al. C. A. 2d Cir. Certiorari denied.

No. 20–7534. Tijerino-Sevilla *v.* Garland, Attorney General. C. A. 11th Cir. Certiorari denied. Reported below: 840 Fed. Appx. 416.

No. 20–7539. James *v.* Campbell, Warden. C. A. 6th Cir. Certiorari denied.

No. 20–7557. Nora *v.* Office of Lawyer Regulation. Sup. Ct. Wis. Certiorari denied. Reported below: 2020 WI 70, 393 Wis. 2d 359, 945 N. W. 2d 559.

No. 20–7565. Udoh *v.* Garland, Attorney General. C. A. 8th Cir. Certiorari denied. Reported below: 835 Fed. Appx. 895.

No. 20–7566. Chailla et vir *v.* Saul, Commissioner of Social Security, et al. C. A. 3d Cir. Certiorari denied. Reported below: 838 Fed. Appx. 653.

No. 20–7569. Hunt *v.* Florida. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 305 So. 3d 536.

No. 20–7573. Harris *v.* Nebraska. Ct. App. Neb. Certiorari denied. Reported below: 29 Neb. App. —–.

No. 20–7585. Bowser *v.* Kansas. Sup. Ct. Kan. Certiorari denied. Reported below: 312 Kan. 289, 474 P. 3d 744.

No. 20–7587. Brandon *v.* Saul, Commissioner of Social Security. C. A. 9th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 857.

No. 20–7607. Burris *v.* Mason, Superintendent, State Correctional Institution at Mahanoy, et al. C. A. 3d Cir. Certiorari denied.

No. 20–7623. Drake *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 239 A. 3d 72.

No. 20–7625. Ross *v.* Myrick et al. C. A. 9th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 499.

No. 20–7641. Hawkins *v.* Shoop, Warden. C. A. 6th Cir. Certiorari denied.

No. 20–7644. Hansen *v.* Kentucky. Ct. App. Ky. Certiorari denied.

No. 20–7664. Green *v.* Chapman, Warden. C. A. 6th Cir. Certiorari denied.

No. 20–7672. Garcia *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 829 Fed. Appx. 840.

No. 20–7673. Sliter-Matias *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 837 Fed. Appx. 910.

No. 20–7675. Stroming *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 838 Fed. Appx. 624.

No. 20–7677. Fuentes-Morales *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 828 Fed. Appx. 926.

No. 20–7679. Lucas, aka Madron *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 836 Fed. Appx. 142.

No. 20–7680. Beasley *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 832 Fed. Appx. 314.

No. 20–7684. Glenn *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 20–7689. Wilmore *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 20–7697. Berckmann *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 971 F. 3d 999.

No. 20–7702. Smith *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 833 Fed. Appx. 516.

No. 20–7703. Robinson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 828 Fed. Appx. 187.

No. 20–7705. Serrano *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 20–7707. Ledford *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 834 Fed. Appx. 12.

No. 20–7708. Castro Orellana *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 832 Fed. Appx. 923.

No. 20–7709. Henry *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 842 Fed. Appx. 809.

No. 20–7716. Mosley *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 805 Fed. Appx. 164.

No. 20–7723. Davis *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 980 F. 3d 1089.

No. 20–7726. Davis *v.* Musselwhite, Warden. C. A. 8th Cir. Certiorari denied.

No. 20–7728. Smeaton *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 20–7729. Rose *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 788.

No. 20–7730. Brooks *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 841 Fed. Appx. 346.

No. 20–7737. Fleming *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 20–7738. Grant *v.* United States. Ct. App. D. C. Certiorari denied.

No. 20–7743. Milliron *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 984 F. 3d 1188.

No. 20–7744. Price *v.* Delaware. Sup. Ct. Del. Certiorari denied. Reported below: 247 A. 3d 687.

No. 20–7745. Myles *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 20–7746. Angel Mendoza *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 507.

No. 20–7755. Veasey *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 843 Fed. Appx. 555.

No. 20–7764. Carter *v.* Winn, Warden. C. A. 6th Cir. Certiorari denied.

No. 20–7767. Ellison *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 827 Fed. Appx. 310.

No. 20–7773. Jaiyeola *v.* Toyota Motor Corp. et al. C. A. 6th Cir. Certiorari denied.

No. 20–7775. Spann *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 984 F. 3d 711.

No. 20–7779. Shrader *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 241.

No. 20–7784. Goins *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 828 Fed. Appx. 324.

No. 20–7785. Graham *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 20–7786. McCaskill *v.* Inch, Secretary, Florida Department of Corrections. Sup. Ct. Fla. Certiorari denied.

No. 20–7793. Lira Estrada *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 829 Fed. Appx. 72.

No. 20–7795. Hutchinson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 831 Fed. Appx. 195.

No. 20–7801. Herman *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 20–7803. Hall *v.* Delaware. Sup. Ct. Del. Certiorari denied. Reported below: 242 A. 3d 1085.

No. 20–7807. Clark *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 20–7838. Vargas *v.* Koenig, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 829 Fed. Appx. 796.

No. 20–701. Calvert *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

Statement of Justice Sotomayor respecting the denial of certiorari.

Petitioner James Calvert was convicted in Texas of murdering his ex-wife. At sentencing, the State called David Logan, a former corrections officer. Logan testified in detail about an incident in which an inmate stabbed him in the eye with a pencil, leaving him blind in that eye. The State introduced a medical scan showing that the pencil traveled four inches into Logan's brain before coming to rest against an artery. Logan was unsure why the inmate attacked him, but testified that if an inmate "'has it on his mind to hurt you, there's nothing you can do.'" 2019 WL 5057268, *58 (Tex. Crim. App. 2019).

You may be asking what Calvert had to do with this gruesome incident. The answer is nothing. The State nonetheless argued that Logan's testimony and brain scan were admissible because they revealed "an inmate's opportunity for violence within the penitentiary." 164 Record 20. "Do you think they can be controlled in the pen, these inmates?" the State rhetorically asked the jury in its closing argument. 171 *id.,* at 128. "Then you tell me why David Logan got a pencil stabbed into his brain." *Ibid.* "Because of what happened to [Logan]," the State argued, Calvert "should get the death penalty." 164 *id.,* at 19. At the jury's recommendation, the trial court sentenced Calvert to death.

Calvert appealed. He argued that admission of the evidence about the inmate's attack on Logan violated his right to individualized sentencing under the Eighth Amendment.[1] See *Woodson* v. *North Carolina*, 428 U. S. 280, 303 (1976) (plurality opinion) (capital sentencing proceedings must "allow the particularized consideration of relevant aspects of the [defendant's] character and record"). The Texas Court of Criminal Appeals disagreed, holding that "[t]he individualized sentencing requirement is satisfied when the jury is able to consider and give full effect to a defendant's mitigating evidence." 2019 WL 5057268, *59. That requirement was satisfied here, the court concluded, because Calvert was not "prevented from presenting relevant mitigating evidence." *Ibid.*

Calvert now asks this Court to grant certiorari.[2] In my view, Calvert raises a serious argument that the State's reliance on a graphic instance of violence by an unrelated inmate to prove that he posed a future danger deprived him of his right to an individualized sentencing.

Despite this weighty question, I do not dissent from the decision to deny Calvert's petition, because I agree that his claim does not meet the Court's traditional criteria for granting certiorari. See this Court's Rule 10. The legal question Calvert presents is complex and would benefit from further percolation in the lower courts prior to this Court granting review. Certainly, the law is not clear enough to warrant this Court summarily

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[1] Calvert also argued that admission of the evidence about the inmate's attack on Logan violated the Texas Rules of Evidence. The Texas Court of Criminal Appeals agreed, but found the error harmless "because the State presented considerable admissible evidence of [Calvert's] future dangerousness and the prison conditions in which he would be confined." 2019 WL 5057268, *59 (2019).

[2] Calvert raises another claim based on courtroom deputies administering a 50,000-volt electric shock to him because of his failure to follow the court's rule that he stand when addressing the court. While the Texas Court of Criminal Appeals agreed with Calvert that the incident violated due process, it denied relief, concluding that the error was not structural because it occurred outside of the presence of the jury and did not affect Calvert's presumption of innocence or ability to participate in his defense at trial. *Id.*, at *9–*11. Although it may be appropriate for this Court to defer to the lower court's factbound prejudice determination, I underscore how astonishing it is for a court to direct deputies to shock a defendant during trial. If there could ever be an excuse for such violence, enforcing courtroom decorum would not be it.

reversing the Texas Court of Criminal Appeals, as Calvert requests. See *Kansas* v. *Carr*, 577 U. S. 108, 123 (2016) (declining to "shoehorn . . . into the Eighth Amendmen[t]" a claim that the jury considered evidence that "clouded [its] consideration of mitigating evidence," and suggesting such claims should be brought under the Due Process Clause); see also *Sears* v. *Upton*, 561 U. S. 945, 946 (2010) (*per curiam*) (summarily reversing because constitutional error was "plain from the face of the state court's opinion").

I write separately to emphasize that the denial of Calvert's petition should not be construed as a rejection of his claim on the merits.[3] Nor does the denial of certiorari suggest the Court approves of the State's tactics. As the court below recognized, the gruesome attack on Officer Logan "had no connection" to Calvert. 2019 WL 5057268, *58. Indeed, the State introduced no evidence that Calvert "had attempted to attack or physically injure anyone" while incarcerated. *Ibid.* The State asked the jury to sentence Calvert to death in part because of a different person's violent conduct that had nothing to do with Calvert. It succeeded. Although this case does not meet this Court's traditional criteria for certiorari, it still stands as a grim reminder that courts should rigorously scrutinize how States prove that a person should face the ultimate penalty. Juries must have a clear view of the "uniquely individual human beings" they are sentencing to death, *Woodson*, 428 U. S., at 304 (plurality opinion), not one tainted by irrelevant facts about other people's crimes. The Constitution and basic principles of justice require nothing less.

No. 20–888. Ali *v.* Biden, President of the United States, et al. C. A. D. C. Cir. Certiorari denied. Justice Gorsuch and Justice Kavanaugh took no part in the consideration or decision of this petition. Reported below: 959 F. 3d 364.

No. 20–1004. Collier *v.* Dallas County Hospital District, dba Parkland Health & Hospital System. C. A. 5th Cir. Motion of Howard University School of Law Human and Civil

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[3] In addition to Calvert's Eighth Amendment claim, the State's conduct here may implicate due process. The introduction of irrelevant evidence can "so infec[t] the sentencing proceeding with unfairness as to render the jury's imposition of the death penalty a denial of due process." *Romano* v. *Oklahoma*, 512 U. S. 1, 12 (1994). The Court's decision today should not be viewed as a rejection of the merits of that potential claim, either.

Rights Clinic for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 827 Fed. Appx. 373.

No. 20–1069. Janssen Pharmaceuticals, Inc., et al. *v.* A. Y. et al. Super. Ct. Pa. Certiorari denied. Justice Alito took no part in the consideration or decision of this petition. Reported below: 224 A. 3d 1.

No. 20–1227. Whitehead *v.* Netflix, Inc., et al. C. A. 9th Cir. Certiorari denied. Justice Breyer took no part in the consideration or decision of this petition. Reported below: 830 Fed. Appx. 967.

No. 20–1247. Dix *v.* Edelman Financial Services, LLC, et al. C. A. 7th Cir. Certiorari denied. Justice Barrett took no part in the consideration or decision of this petition. Reported below: 978 F. 3d 507.

No. 20–1317. MacIntyre *v.* JPMorgan Chase Bank, N. A. C. A. 10th Cir. Certiorari denied. Justice Gorsuch took no part in the consideration or decision of this petition. Reported below: 827 Fed. Appx. 812.

No. 20–6448. Davis *v.* Quay, Warden. C. A. 3d Cir. Certiorari denied. Justice Alito took no part in the consideration or decision of this petition. Reported below: 818 Fed. Appx. 147.

No. 20–6484. Tyler *v.* United States. C. A. 3d Cir. Certiorari denied. Justice Alito took no part in the consideration or decision of this petition. Reported below: 956 F. 3d 116.

No. 20–7694. Escobar De Jesus *v.* United States. C. A. 1st Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition.

Rehearing Denied

No. 19–8464. Mitchell *v.* United States, 590 U. S. 983;

No. 20–959. Thigpen *v.* Board of Trustees of the Local 807 Labor-Management Pension Fund, 592 U. S. 1319;

No. 20–972. Ibeabuchi *v.* Eggleston, Director of Operation, et al., 592 U. S. 1319;

No. 20–1228. Jaye *v.* United States District Court for the Northern District of Iowa, 593 U. S. 915;

No. 20–5814. Webb *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division, 592 U. S. 1116;

No. 20–6007. Wright *v.* United States, 592 U. S. 1093;

No. 20–6039. McBride *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division, 592 U. S. 1180;

No. 20–6138. Walker *v.* Kelley, Director, Arkansas Department of Correction, 592 U. S. 1153;

No. 20–6161. Brunson *v.* United States, 592 U. S. 1271;

No. 20–6361. Davis *v.* Inch, Secretary, Florida Department of Corrections, et al., 592 U. S. 1222;

No. 20–6395. Griffith *v.* New York, 592 U. S. 1222;

No. 20–6440. Toscano *v.* Adam et al., 592 U. S. 1190;

No. 20–6510. Ford *v.* Budde, 592 U. S. 1238;

No. 20–6673. Diehl *v.* United States, 592 U. S. 1240;

No. 20–6735. McClung et al. *v.* Estevez, 592 U. S. 1321;

No. 20–6751. Waldrep *v.* Shinn, Director, Arizona Department of Corrections, Rehabilitation and Reentry, et al., 592 U. S. 1305;

No. 20–6881. Douglas *v.* Zimmerman et al., 592 U. S. 1322;

No. 20–6882. Zou *v.* Linde Engineering North America, Inc., 592 U. S. 1322; and

No. 20–6999. Bounchanh *v.* Washington State Health Care Authority et al., 592 U. S. 1324. Petitions for rehearing denied.

No. 20–5808. In re Liverman, 592 U. S. 1104. Motion for leave to file petition for rehearing denied.

No. 20–6835. Hamilton *v.* Reagle, Warden, 592 U. S. 1313. Petition for rehearing denied. Justice Barrett took no part in the consideration or decision of this petition.

May 19, 2021

Certiorari Denied

No. 20–8037 (20A166). Jones *v.* Texas. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to Justice Alito, and by him referred to the Court, denied. Certiorari denied.

May 20, 2021

Dismissal Under Rule 46

No. 20–1484. SFPP, L. P. *v.* Federal Energy Regulatory Commission et al. C. A. D. C. Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 967 F. 3d 788.

MAY 21, 2021

Dismissal Under Rule 46

No. 20–892. ARIOSA DIAGNOSTICS, INC., ET AL. *v.* ILLUMINA, INC., ET AL. C. A. Fed. Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 967 F. 3d 1319.