2025-2026 Supplement

Federal Courts

Cases and Materials

Third Edition

July 2025

Jonathan R. Siegel

Davis Professor of Law
Associate Dean for Research and Faculty Development
George Washington University Law School

ASPEN PUBLISHING

INTRODUCTION

This Supplement is designed to accompany the Third Edition of the Casebook, which was published in February 2023. It is cumulative and contains decisions and other material from all years since then. It also contains the Constitution and relevant statutes.

Highlights of the Supplement include:

- *Trump v. CASA, Inc.*, 145 S. Ct. 2540 (2025), which held that district courts normally may not remedy a plaintiff's injury by awarding a "universal" injunction, i.e., an injunction forbidding the defendant's unlawful conduct universally, not merely with regard to the plaintiff.

- *Securities & Exchange Comm'n v. Jarkesy*, 144 S. Ct. 2117 (2024), in which the Supreme Court held that the Seventh Amendment bars Congress from authorizing a non-Article III tribunal to decide a claim by the government for civil penalties if the matter "from its nature, is the subject of suit at the common law"

- *United States v. Texas*, 143 S. Ct. 1964 (2023), which holds that even a plaintiff that has suffered an injury in fact lacks standing to sue if the injury is not "judicially cognizable."

- *Health & Hosp. Corp. of Marion County v. Talevski*, 143 S. Ct. 1444 (2023), which clarifies the test for when a statutory condition on federal funding may be enforced via a § 1983 action.

The Supplement also contains numerous other cases and materials on other Federal Courts topics, including standing, mootness, ripeness, sovereign immunity, § 1983 actions, Supreme Court review of state court decisions, and habeas corpus.

J.S.
July 2025

TABLE OF CONTENTS

Part I: NEW CASES AND MATERIALS

Updates to Chapter 2

C. Standing to Sue

2. The Requirements of Standing Doctrine—Injury

Add to note 6 on p. 58:

In a concurring opinion in *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024), Justice Thomas questioned the concept of associational standing. He doubted whether associational standing was consistent with the traditional rule that a plaintiff could not seek to vindicate someone else's injuries. He also argued that associational standing permits plaintiffs to bring what are effectively class actions without having to satisfy the requirements for such actions, such as the requirement of showing that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). He said that in a future case the Court "should address whether associational standing can be squared with Article III's requirement that courts respect the bounds of their judicial power." No other Justice joined Justice Thomas's opinion. Do you agree with it?

3. The Requirements of Standing Doctrine—Causation and Redressability

Add as new paragraphs on p. 72:

6. The focus on evidence continued in subsequent cases. In *Murthy v. Missouri*, 144 S. Ct. 1053 (2024), the plaintiffs sued federal officials and agencies. The suit concerned efforts by the defendants to get social media platforms such as Twitter (now known as "X") and Facebook to toughen their moderation of content relating to the COVID-19 pandemic or elections. The defendants encouraged the platforms to suppress information that, in the defendants' view, was false and socially dangerous, such as misinformation about vaccines. The plaintiffs included individuals who alleged that because of the defendants' pressure on the platforms, their postings were removed or demoted (i.e., retained but made less visible to users). On a motion for a preliminary injunction, the district court determined that the defendants were indeed coercing the platforms and preliminarily enjoined the defendants from urging the platforms to suppress or demote content.

On review, the Supreme Court, speaking through Justice Barrett, held that no plaintiff had established standing to seek a preliminary injunction. It was up to the plaintiffs, the Court held, to prove what effect an order directed to the governmental defendants would have on the

platforms and the plaintiff's speech thereon.[*] The Court also held that the plaintiffs could not treat "the government" as a monolith, but would need to show how their suppression of speech on the platforms could be traced to *each* defendant sued.

Examining the evidence in considerable detail, the Court held that, with one possible exception, none of the plaintiffs had demonstrated that any past restriction of their speech on the platforms had resulted from the defendants' efforts, as opposed to the platforms' own content-moderation policies. As to the one plaintiff who might have presented enough evidence to make that showing, the Court held that because the defendants' pressure campaign had "considerably subsided" by 2022, which was before the suit was filed, the plaintiff could not show a likelihood that the defendants' pressure on the platforms would lead to the suppression of her speech on the platforms in the future. Accordingly, no plaintiff had standing to seek an injunction against the defendants. Three Justices dissented.

But in *Diamond Alternative Energy, LLC v. EPA*, 145 S. Ct. 2121 (2025), the Court allowed a challenge by fuel producers to the federal Environmental Protection Agency's approval of a California regulation requiring auto manufacturers to sell more electric vehicles and fewer gas-powered vehicles in California. (Federal law pre-empts the ability of most states to impose such requirements but permits California to do so if it obtains EPA approval.) The Court held that approval of the California regulation *injured* the plaintiff fuel producers by *causing* auto manufacturers to produce fewer gas-powered vehicles, which would in turn depress the plaintiffs' sales. Moreover, the Court held, setting aside the EPA approval would likely provide the plaintiffs with at least some redress. The Court rejected the defendants' argument that auto manufacturers had become sufficiently dedicated to producing electric vehicles that setting aside the regulation could not be expected to have an impact on their behavior. The Court said that "commonsense economic inferences about the operation of the automobile market," combined with the plaintiffs' and the defendants' statements about the importance of the regulation, made it likely that setting aside the regulation would provide at least some relief to the plaintiffs. The Court rejected the suggestion that the plaintiffs were required to present supporting evidence from expert economists.[**] Two Justices dissented.

7. The Court has also held that a plaintiff's claim of causation must not be "too attenuated." In *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024), the plaintiffs, emergency room doctors, challenged the FDA's relaxation of certain restrictions on the use of mifepristone

[*] The Court noted that in order to have standing to seek prospective injunctive relief, the plaintiffs would have to show that the defendants' suppression efforts would be likely to cause *future* messages by the plaintiffs to be suppressed or demoted. *See Los Angeles v. Lyons*, Casebook Chapter 2.C.4.b.

[**] The Court also suggested, without actually holding, that the plainitffs might have standing by virtue of the principle that "if a plaintiff is an object of the action (or forgone action) at issue, then there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it" (internal quotation omitted). The Court suggested that fuel producers might be an "object" of the California regulation, even though the regulation imposed requirements only on auto manufacturers. The Court said that "When the government prohibits or impedes Company A from using Company B's product, then both Company A and Company B might be deemed objects of the government action at issue." But because the Court held in favor of the plaintiffs on the basis noted in the text above, the Court found it unnecessary to rule on this point.

to induce abortions. The plaintiffs asserted that the FDA's action would lead to increased use of mifepristone, with the result that more women would suffer complications from the drug and would therefore require emergency room treatment, which would divert the plaintiffs' time and attention from other patients, increase their risk of liability, and potentially increase their insurance costs. Speaking through Justice Kavanaugh, The Court held that this claim was "simply too attenuated." Doctors, the Court held, do not have standing to challenge the loosening of general safety regulations simply because it might cause more people to require medical treatment. If they did, the Court noted, a doctor could have standing to challenge an increase in the speed limit, or a school district's decision to start a football league, because these actions might lead to more injuries. Similarly, firefighters could have standing to challenge relaxation of building codes that increased fire risks. The Court "decline[d] to start the Federal Judiciary down that uncharted path."

8. Redressability "requires that the court be able to afford relief *through the exercise of its power*, not through the persuasive or even awe-inspiring effect of the opinion *explaining* the exercise of its power." *Haaland v. Brackeen*, 143 S. Ct. 1609 (2023). In *Haaland*, plaintiffs challenged the federal Indian Child Welfare Act (ICWA), which, among other things, requires that when a state court holds an adoption or foster placement proceeding regarding an "Indian child" (defined as a child who is a member of an Indian tribe or who is eligible for membership and who is the biological child of a member) the court must give priority to placing the child with extended family members, other members of the child's tribe, or other Indian families. The plaintiffs were non-Indians who desired to adopt Indian children. They sued federal agencies and officials. They asserted, among other things, that the ICWA violated their rights under the Equal Protection Clause. The Court held that the alleged discrimination counted as an Article III injury, but that the lawsuit could not redress the injury because the only defendants were federal agencies and officials. The ICWA's adoption and foster placement preferences are implemented by state courts and agencies, and no such party was a defendant. An injunction or declaratory judgment directed to the federal defendants would not compel state parties to do anything. The likelihood that state courts and officials would be *persuaded* by a federal court decision in a case in which they were not parties was, the Supreme Court held, irrelevant, as redressability must arise from a federal court's judgment, not its opinion. The Court noted that the plaintiffs could raise their Equal Protection challenge in a state adoption or foster placement proceeding.

Append to note 4 on p. 75:

In *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024), the Court said that *Havens Realty* "was an unusual case" and that the Court had been careful not to extend its holding beyond its context. The HOME organization had standing in *Havens*, the Court held, because it operated a housing counseling service, and the false information that Havens supplied to HOME impaired HOME's ability to provide its clients with this service. That did not mean that any organization would have standing to challenge any federal policies it disliked simply because it "spen[t] a single dollar opposing those policies."

4. Further Aspects of the Injury Requirement

b. The Relationship Between Injury and Remedy; Probabilistic Injuries

Add as a footnote following the citation to *Defenders of Wildlife* on p. 92:

See also 303 Creative LLC v. Elenis, 6 F.4th 1160, 1171–72 (10th Cir. 2021). In that case, a web designer challenged a state statute requiring her to offer her services without discrimination based on, among other things, sexual orientation. The plaintiff alleged that she desired to offer the service of creating wedding websites, but that she desired to refuse to offer that service to same-sex couples. She alleged that the state statute violated her First Amendment rights. Although she had not yet entered the wedding website business, the court of appeals held that she had standing because she faced a credible threat of prosecution for what she alleged she wished to do. The court said that "Article III does not require the plaintiff to risk an actual arrest, prosecution, or other enforcement action." (internal quotation omitted). The Supreme Court granted certiorari and reversed on the merits, 143 S. Ct. 2298 (2023).

Add as section 4.d on p. 105:

d. The Requirement of a "Judicially Cognizable" Injury

UNITED STATES v. TEXAS
143 S. Ct. 1964 (2023)

JUSTICE KAVANAUGH delivered the opinion of the Court.

In 2021, after President Biden took office, the Department of Homeland Security issued new Guidelines for immigration enforcement. The Guidelines prioritize the arrest and removal from the United States of noncitizens who are suspected terrorists or dangerous criminals, or who have unlawfully entered the country only recently. . . .

Texas and Louisiana sued the Department of Homeland Security. . . . According to those States, the Guidelines contravene two federal statutes that purportedly require the Department to arrest more criminal noncitizens pending their removal. . . . First, . . . for certain noncitizens, such as those who are removable due to a state criminal conviction, [8 U.S.C.] § 1226(c) . . . says that the Department "shall" arrest those noncitizens and take them into custody when they are released from state prison. Second, § 1231(a)(2) . . . provides that the Department "shall" arrest and detain certain noncitizens for 90 days after entry of a final order of removal.

In the States' view, the Department's failure to comply with those statutory mandates imposes costs on the States. The States assert, for example, that they must continue to incarcerate or supply social services such as healthcare and education to noncitizens who should be (but are not being) arrested by the Federal Government. . . . [The district court determined that the states had standing based on these costs and ruled for the states on the merits. It "vacated" the Guidelines. The federal government appealed and the Supreme Court granted certiorari before judgment.]

II

Article III of the Constitution confines the federal judicial power to "Cases" and "Controversies." Under Article III, a case or controversy can exist only if a plaintiff has standing to sue—a bedrock constitutional requirement. . . .

Article III standing is "not merely a troublesome hurdle to be overcome if possible so as to reach the 'merits' of a lawsuit which a party desires to have adjudicated; it is a part of the basic charter promulgated by the Framers of the Constitution at Philadelphia in 1787." . . . The principle of Article III standing is "built on a single basic idea—the idea of separation of powers." . . . Standing doctrine helps safeguard the Judiciary's proper—and properly limited—role in our constitutional system. By ensuring that a plaintiff has standing to sue, federal courts "prevent the judicial process from being used to usurp the powers of the political branches." . . .

A

. . . To establish standing, a plaintiff must show an injury in fact caused by the defendant and redressable by a court order. . . . The District Court found that the States would incur additional costs because the Federal Government is not arresting more noncitizens. Monetary costs are of course an injury. But this Court has "also stressed that the alleged injury must be legally and judicially cognizable." . . . That "requires, among other things," that the "dispute is traditionally thought to be capable of resolution through the judicial process"—in other words, that the asserted injury is traditionally redressable in federal court. . . .

The States have not cited any precedent, history, or tradition of courts ordering the Executive Branch to change its arrest or prosecution policies so that the Executive Branch makes more arrests or initiates more prosecutions. On the contrary, this Court has previously ruled that a plaintiff lacks standing to bring such a suit.

The leading precedent is *Linda R. S. v. Richard D.*, 410 U.S. 614 (1973). The plaintiff in that case contested a State's policy of declining to prosecute certain child-support violations. This Court decided that the plaintiff lacked standing to challenge the State's policy, reasoning that in "American jurisprudence at least," a party "lacks a judicially cognizable interest in the prosecution ... of another." . . . The Court concluded that "a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution." . . .

The Court's Article III holding in *Linda R. S.* applies to challenges to the Executive Branch's exercise of enforcement discretion over whether to arrest or prosecute. . . .

In short, this Court's precedents and longstanding historical practice establish that the States' suit here is not the kind redressable by a federal court.

B

Several good reasons explain why, as *Linda R. S.* held, federal courts have not traditionally entertained lawsuits of this kind.

To begin with, when the Executive Branch elects *not* to arrest or prosecute, it does not exercise coercive power over an individual's liberty or property, and thus does not infringe upon interests that courts often are called upon to protect. . . . And for standing purposes, the absence of coercive power over the plaintiff makes a difference: When "a plaintiff's asserted injury arises from the government's allegedly unlawful regulation (or lack of regulation) of someone else, much more is needed" to establish standing. . . . [*Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562 (1992).]

Moreover, lawsuits alleging that the Executive Branch has made an insufficient number of arrests or brought an insufficient number of prosecutions run up against the Executive's Article II authority to enforce federal law. Article II of the Constitution assigns the "executive Power" to the President and provides that the President "shall take Care that the Laws be faithfully executed." . . . Under Article II, the Executive Branch possesses authority to decide "how to prioritize and how aggressively to pursue legal actions against defendants who violate the law." . . . The Executive Branch—not the Judiciary—makes arrests and prosecutes offenses on behalf of the United States. . . .

That principle of enforcement discretion over arrests and prosecutions extends to the immigration context. . . . [T]he Executive's enforcement discretion implicates not only "normal domestic law enforcement priorities" but also "foreign-policy objectives." . . . [T]he Executive Branch also retains discretion over whether to remove a noncitizen from the United States. . . .

In addition to the Article II problems raised by judicial review of the Executive Branch's arrest and prosecution policies, courts generally lack meaningful standards for assessing the propriety of enforcement choices in this area. After all, the Executive Branch must prioritize its enforcement efforts. . . . [T]he Executive Branch (i) invariably lacks the resources to arrest and prosecute every violator of every law and (ii) must constantly react and adjust to the ever-shifting public-safety and public-welfare needs of the American people.

This case illustrates the point. . . . [T]he Executive Branch does not possess the resources necessary to arrest or remove all of the noncitizens covered by § 1226(c) and § 1231(a)(2). . . .

In light of inevitable resource constraints and regularly changing public-safety and public-welfare needs, the Executive Branch must balance many factors when devising arrest and prosecution policies. That complicated balancing process in turn leaves courts without meaningful standards for assessing those policies. *Cf. Heckler v. Chaney*, 470 U.S. 821, 830–832 (1985). . . . Therefore, in both Article III cases and Administrative Procedure Act cases, this Court has consistently recognized that federal courts are generally not the proper forum for resolving claims that the Executive Branch should make more arrests or bring more prosecutions. See *Linda R. S.*, 410 U.S. at 619; cf. *Heckler*, 470 U.S. at 831 (recognizing the "general unsuitability for judicial review of agency decisions to refuse enforcement"). . . .

All of those considerations help explain why federal courts have not traditionally entertained lawsuits of this kind. . . . If the Court green-lighted this suit, we could anticipate complaints in future years about alleged Executive Branch under-enforcement of any similarly worded laws—whether they be drug laws, gun laws, obstruction of justice laws, or the like. We decline to start the Federal Judiciary down that uncharted path. Our constitutional system of separation of powers "contemplates a more restricted role for Article III courts." . . .

C

In holding that Texas and Louisiana lack standing, we do not suggest that federal courts may never entertain cases involving the Executive Branch's alleged failure to make more arrests or bring more prosecutions.

First, the Court has adjudicated selective-prosecution claims under the Equal Protection Clause. In those cases, however, a party typically seeks to prevent his or her own prosecution, not to mandate additional prosecutions against other possible defendants. . . .

Second, . . . the standing analysis might differ when Congress elevates *de facto* injuries to the status of legally cognizable injuries redressable by a federal court. . . . For example, Congress might (i) specifically authorize suits against the Executive Branch by a defined set of plaintiffs

who have suffered concrete harms from executive under-enforcement and (ii) specifically authorize the Judiciary to enter appropriate orders requiring additional arrests or prosecutions by the Executive Branch.

Here, however, the relevant statutes do not supply such specific authorization. . . .

Third, the standing calculus might change if the Executive Branch wholly abandoned its statutory responsibilities to make arrests or bring prosecutions. Under the Administrative Procedure Act, a plaintiff arguably could obtain review of agency non-enforcement if an agency "has consciously and expressly adopted a general policy that is so extreme as to amount to an abdication of its statutory responsibilities." *Heckler*, 470 U.S. at 833, n.4; . . . cf. 5 U.S.C. § 706(1). So too, an extreme case of non-enforcement arguably could exceed the bounds of enforcement discretion and support Article III standing. But the States have not advanced a *Heckler*-style "abdication" argument in this case or argued that the Executive has entirely ceased enforcing the relevant statutes. Therefore, we do not analyze the standing ramifications of such a hypothetical scenario.

Fourth, a challenge to an Executive Branch policy that involves both the Executive Branch's arrest or prosecution priorities *and* the Executive Branch's provision of legal benefits or legal status could lead to a different standing analysis. That is because the challenged policy might implicate more than simply the Executive's traditional enforcement discretion. . . . Again, we need not resolve the Article III consequences of such a policy.

Fifth, policies governing the continued detention of noncitizens who have already been arrested arguably might raise a different standing question than arrest or prosecution policies. . . . But this case does not concern a detention policy, so we do not address the issue here.[5]

D

. . . [O]ur Article III decision today should in no way be read to suggest or imply that the Executive possesses some freestanding or general constitutional authority to disregard statutes requiring or prohibiting executive action. Moreover, the Federal Judiciary of course routinely and appropriately decides justiciable cases involving statutory requirements or prohibitions on the Executive. . . .

This case . . . implicates only . . . the Executive Branch's traditional discretion over whether to take enforcement actions against violators of federal law. And this case raises only the narrow Article III standing question of whether the Federal Judiciary may in effect order the Executive Branch to take enforcement actions against violators of federal law—here, by making more arrests. Under this Court's Article III precedents and the historical practice, the answer is no.[6]

. . . [T]he question of whether the federal courts have jurisdiction under Article III is distinct from . . . whether the Executive Branch is complying with the relevant statutes. . . . We take no position on whether the Executive Branch here is complying with its legal obligations under §

---

[5] This case concerns only arrest and prosecution policies, and we therefore address only that issue. . . .

[6] As part of their argument for standing, the States also point to *Massachusetts v. EPA*, 549 U.S. 497 (2007). Putting aside any disagreements that some may have with *Massachusetts v. EPA*, that decision does not control this case. The issue there involved a challenge to the denial of a statutorily authorized petition for rulemaking, not a challenge to an exercise of the Executive's enforcement discretion. *Id*., at 520, 526; see also *id*., at 527 (noting that there are "key differences between a denial of a petition for rulemaking and an agency's decision not to initiate an enforcement action" and that "an agency's refusal to initiate enforcement proceedings is not ordinarily subject to judicial review").

1226(c) and § 1231(a)(2). We hold only that the federal courts are not the proper forum to resolve this dispute.

. . . [O]ther forums remain open for examining the Executive Branch's arrest policies. . . . Congress possesses an array of tools to analyze and influence those policies—oversight, appropriations, the legislative process, and Senate confirmations, to name a few. . . . And through elections, American voters can both influence Executive Branch policies and hold elected officials to account for enforcement decisions.. . . .

The States lack Article III standing because this Court's precedents and the "historical experience" preclude the States' "attempt to litigate this dispute at this time and in this form." . . . We reverse the judgment of the District Court.

It is so ordered.

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

The Court holds that Texas and Louisiana lack Article III standing to challenge the Department of Homeland Security's Guidelines for the Enforcement of Civil Immigration Law. I agree. But respectfully, I diagnose the jurisdictional defect differently. The problem here is redressability.

I

. . . The Court holds that Texas and Louisiana lack standing to challenge the Guidelines because "a party lacks a judicially cognizable interest in the prosecution ... of another." . . . [T]he district court found that the Guidelines have led to an increase in the number of aliens with criminal convictions and final orders of removal who are released into the States. . . . The district court also found that, thanks to this development, the States have spent, and continue to spend, more money on law enforcement, incarceration, and social services. . . . Still, the Court insists, "[s]everal good reasons explain why" these harms are insufficient to afford the States standing to challenge the Guidelines. . . .

I confess to having questions about each of the reasons the Court offers. Start with its observation that the States have not pointed to any "historical practice" of courts ordering the Executive Branch to change its arrest or prosecution policies. . . .[A]gain, the district court found that the Guidelines impose "significant costs" on the States. . . . The Court today does not set aside this finding as clearly erroneous. Nor does anyone dispute that even one dollar's worth of harm is traditionally enough to "qualify as concrete injur[y] under Article III." . . .Indeed, this Court has allowed other States to challenge other Executive Branch policies that indirectly caused them monetary harms. See, *e.g., Department of Commerce* v. *New York*, 139 S.Ct. 2551, 2565–66 (2019). So why are these States now forbidden from doing the same?

Next, the Court contends that, "when the Executive Branch elects *not* to arrest or prosecute, it does not exercise coercive power over an individual's liberty or property." . . . Here again, in principle, I agree. But if an exercise of coercive power matters so much to the Article III standing inquiry, how to explain decisions like *Massachusetts* v. *EPA*? There the Court held that Massachusetts had standing to challenge the federal government's decision not to regulate greenhouse gas emissions from new motor vehicles. . . . And what could be less coercive than a decision not to regulate? . . .

Finally, the Court points to the fact that Article II vests in the President considerable enforcement discretion. . . . So much so that "courts generally lack meaningful standards for assessing the propriety of [the Executive Branch's] enforcement choices." . . . But almost as soon as the Court announces this general rule, it adds a caveat, stressing that "[t]his case concerns only arrest and prosecution policies." . . . It's a curious qualification. Article II does not have an Arrest and Prosecution Clause. It endows the President with the "executive Power," . . . and charges him with "tak[ing] Care" that federal laws are "faithfully executed." . . . These provisions give the President a measure of discretion over the enforcement of *all* federal laws, not just those that can lead to arrest and prosecution. So if the Court means what it says about Article II, can it mean what it says about the narrowness of its holding? . . .

II

As I see it, the jurisdictional problem the States face in this case isn't the lack of a "judicially cognizable" interest or injury. . . . The problem the States face concerns something else altogether—a lack of redressability.

To establish redressability, a plaintiff must show from the outset of its suit that its injuries are capable of being remedied "by a favorable decision." . . . Ordinarily, to remedy harms like those the States demonstrated in this suit, they would seek an injunction. The injunction would direct federal officials to detain aliens consistent with what the States say the immigration laws demand. But even assuming an injunction like that would redress the States' injuries, that form of relief is not available to them . . . because of 8 U.S.C. § 1252(f)(1). There, Congress provided that "no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of" certain immigration laws, including the very laws the States seek to have enforced in this case. . . . Put simply, the remedy that would ordinarily have the best chance of redressing the States' harms is a forbidden one in this case. . . .

Faced with that difficulty, the States offer this reply. As a practical matter, they say, we can expect federal officials to alter their arrest and prosecution priorities in light of a judicial opinion reasoning that the Guidelines are unlawful. . . . But this doesn't work. . . . We measure redressability by asking whether a court's judgment will remedy the plaintiff's harms. . . . If the rule were otherwise, and courts could "simply assume that everyone ... will honor the legal rationales that underlie their decrees, then redressability [would] *always* exist." . . .

[Justice Gorsuch said that redressability could not be found in the statutory parenthetical that exempted the Supreme Court from the bar of § 1252(f)(1), as "a plaintiff must establish redressability from the outset of the suit" and must show that favorable decision is "likely" to provide relief. "When the States filed this suit, however, the possibility that it might find its way to this Court was speculative at best."]

III

. . . [Justice Gorsuch also made an extended argument questioning the power of a federal district court to grant "universal" relief, i.e., relief that orders a defendant (typically a government) to desist altogether from a practice that the court has found to be unlawful, as opposed to ordering the defendant to stop the practice with regard to the particular plaintiff.]

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

I agree with the Court that the States lack standing to challenge the Federal Government's Guidelines for the enforcement of immigration law. But I reach that conclusion for a different

reason: The States failed to show that the District Court could order effective relief. JUSTICE GORSUCH ably explains why that is so. . . . And because redressability is an essential element of Article III standing, the District Court did not have jurisdiction.

. . . In [the Court's] view, this case can be resolved based on what it calls the "fundamental Article III principle" that " 'a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution.' " . . . Respectfully, I would not take this route.

I

. . . I am skeptical that *Linda R. S.* suffices to resolve this dispute. First, the Court reads that decision too broadly. Consider the facts. The "mother of an illegitimate child" sued in federal court, "apparently seek[ing] an injunction running against the district attorney forbidding him from declining prosecution" of the child's father for failure to pay child support. . . . She objected, on equal protection grounds, to the State's view that "fathers of illegitimate children" were not within the ambit of the relevant child-neglect statute. . . .

We agreed that the plaintiff "suffered an injury stemming from the failure of her child's father to contribute support payments." . . . But if the plaintiff "were granted the requested relief, it would result only in the jailing of the child's father." . . . [T]he prospect that prosecution would lead to child-support payments could, "at best, be termed only speculative." . . . For this reason, we held that the plaintiff lacked standing. Only then, after resolving the standing question on redressability grounds, did we add that "a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." . . . [W]e denied standing . . . because it was speculative that the plaintiff's requested relief would redress her asserted injury, not because she failed to allege one. . . . I see little reason to seize on the case's bonus discussion of whether "a private citizen" has a "judicially cognizable interest in the prosecution or nonprosecution of another" to establish a broad rule of Article III standing. . . .

Second, even granting the broad principle the Court takes from *Linda R. S.*, I doubt that it applies with full force in this case. Unlike the plaintiff in *Linda R. S.*, the States do not seek the prosecution of any particular individual—or even any particular class of individuals. . . . They acknowledge that 8 U.S.C. § 1226(c)(1)'s detention obligation "only applies until" the Government makes "a decision whether or not to prosecute." . . . [They] concede that if the Government decides not to prosecute, any detention obligation imposed by § 1226(c)(1) "immediately ends." . . . The States make similar concessions with respect to § 1231(a)(2). . . .

The upshot is that the States do not dispute that the Government can prosecute whomever it wants. They seek, instead, the temporary detention of certain noncitizens during elective removal proceedings of uncertain duration. And the States' desire to remove the Guidelines' influence on the Government's admittedly broad discretion to enforce immigration law meaningfully differs from the *Linda R. S.* plaintiff's desire to channel prosecutorial discretion toward a particular target. Given all of this, I would not treat *Linda R. S.* as the "leading precedent" for resolving this case. . . . In my view, the Court is striking new ground rather than applying settled principles.

II

In addition to its reliance on *Linda R. S.*, the Court offers several reasons why "federal courts have not traditionally entertained lawsuits of this kind." . . . I am skeptical that these reasons are rooted in Article III standing doctrine.

. . . The Court . . . invokes "the Executive's Article II authority to enforce federal law." . . . I question whether the President's duty to "take Care that the Laws be faithfully executed," . . . is relevant to the standing analysis. While it is possible that Article II imposes justiciability limits on federal courts, it is not clear to me why any such limit should be expressed through Article III's definition of a cognizable injury. . . .

The Court leans, too, on principles set forth in *Heckler v. Chaney*, 470 U.S. 821 (1985). . . . *Heckler* was not about standing. It addressed a different question: "the extent to which a decision of an administrative agency to exercise its 'discretion' not to undertake certain enforcement actions is subject to judicial review under the Administrative Procedure Act." 470 U.S. at 823; see also 5 U.S.C. § 701(a)(2) (the APA's judicial-review provisions do not apply "to the extent" that "agency action is committed to agency discretion by law"). *Heckler* held that "an agency's decision not to take enforcement action should be presumed immune from judicial review under" the APA. . . But such a decision "is only presumptively unreviewable; the presumption may be rebutted where the substantive statute has provided guidelines for the agency to follow in exercising its enforcement powers." [470 U.S.] at 832–833. Whatever *Heckler*'s relevance to cases like this one, it does not establish a principle of Article III standing. And elevating it to the status of a constitutional rule would transform it from a case about statutory provisions (that Congress is free to amend) to one about a constitutional principle (that lies beyond Congress's domain). . . . [The Court's] conflation of *Heckler* with standing doctrine is likely to cause confusion. . . .

. . . In my view, this case should be resolved on the familiar ground that it must be "'likely,' as opposed to merely 'speculative,' " that any injury "will be 'redressed by a favorable decision.'" . . . I respectfully concur only in the judgment.

JUSTICE ALITO, dissenting.

. . .This Court has long applied a three-part test to determine whether a plaintiff has standing to sue. Under that test, a plaintiff must plead and ultimately prove that it has been subjected to or imminently faces an injury that is: (1) "concrete and particularized," (2) "fairly traceable to the challenged action," and (3) "likely" to be "redressed by a favorable decision." . . . Under that familiar test, Texas clearly has standing to bring this suit.

. . . [A]ccording to the United States, even if a party clearly meets our three-part test for Article III standing, the Constitution bars that party from challenging a President's decision not to enforce the law. . . . The Court—at least for now—does not fully embrace this radical theory and instead holds only that, with some small and equivocal limitations, . . . no party may challenge the Executive's "arrest and prosecution policies." . . . But the Court provides no principled explanation for drawing the line at this point . . . .

. . . Congress passed and President Clinton signed a law that commands the detention and removal of aliens who have been convicted of certain particularly dangerous crimes. The Secretary of Homeland Security, however, has instructed his agents to disobey this legislative command and instead follow a different policy that is more to his liking. And the Court now says that no party injured by this policy is allowed to challenge it in court. . . . That interpretation of executive authority and Article III's case or controversy requirement is deeply and dangerously flawed. . . .

II

. . . Texas easily met its burden to show a concrete, particularized injury that is traceable to the [Guidelines] and redressable by the courts. . . .

A

Injury in fact. The District Court's factual findings, which must be accepted unless clearly erroneous, quantified the cost of criminal supervision of aliens who should have been held in DHS custody and also identified other burdens that Texas had borne and would continue to bear going forward. These findings sufficed to establish a concrete injury that was specific to Texas. . . .

Traceability. The District Court found that each category of cost would increase "*because of* the [Guidelines]," rather than decisions that DHS personnel would make irrespective of the directions that memorandum contains. . . . The majority does not hold—and in my judgment, could not plausibly hold—that these findings are clearly erroneous. . . .

Redressability. A court order that forecloses reliance on the [Guidelines] would likely redress the States' injuries. If, as the District Court found, DHS personnel rescind detainers "because of " the [Guidelines], then vacating [them] would likely lead to those detainers' remaining in place.

B

. . . [Justice Alito disagreed with Justice Gorsuch's argument that a statutory bar to injunctive relief meant that Texas could not satisfy the "redressability" requirement. Justice Alito argued that the statute's allowance of injunctive relief by the Supreme Court sufficed for redressability even if lower courts could not enter injunctive relief. He also argued that even if no court could issue injunctive relief, a declaratory judgment indicating that the Guidelines were unlawful would have provided sufficient redress. He cited a prior case in which a plurality of the Court indicated that a declaratory judgment was sufficient for redressability because it was "substantially likely" that executive officials would abide by such a judgment. He also indicated that he would not use this case to address Justice Gorsuch's argument that district court may not issue "universal" orders.]

III

The majority adopts the remarkable rule that injuries from an executive decision not to arrest or prosecute, even in a civil case, are generally not "cognizable." . . .

A

Prior to today's decision, it was established law that plaintiffs who suffer a traditional injury resulting from an agency "decision not to proceed" with an enforcement action have Article III standing. *Federal Election Comm'n v. Akins*, 524 U.S. 11, 19 (1998). The obvious parallel to the case before us is *Massachusetts v. EPA*, 549 U.S. 497 (2007). . . . In that prior case, Massachusetts challenged the Environmental Protection Agency's failure to use its civil enforcement powers to regulate greenhouse gas emissions that allegedly injured the Commonwealth. Massachusetts argued that it was harmed because the accumulation of greenhouse gases would lead to higher temperatures; higher temperatures would cause the oceans to rise; and rising sea levels would cause the Commonwealth to lose some of its dry land. . . . Proclaiming that Massachusetts' standing claim was entitled to "special solicitude," the Court held that the Commonwealth had standing. . . .

The reasoning in that case applies with at least equal force in the case at hand. . . .

B

. . .The majority says that the "leading precedent" supporting its holding is *Linda R. S. v. Richard D.*, 410 U.S. 614. . . . But as JUSTICE BARRETT notes, . . . the suit to compel prosecution in *Linda R. S.* was rejected "because of the unlikelihood that the relief requested would redress appellant's claimed injury." . . .

C

. . . The majority lists five categories of cases in which a court would—or at least might—have Article III jurisdiction to entertain a challenge to arrest or prosecution policies, but this list does nothing to allay concern about the Court's new path. . . . [Justice Alito criticized the Court's reasoning as to each category, including:]

[T]he majority grants that "the standing analysis *might* differ when Congress elevates *de facto* injuries to the status of legally cognizable injuries." . . . We have said that the enactment of a statute may help us to determine in marginal cases whether an injury is sufficiently concrete and particularized to satisfy the first prong of our three-part standing test. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016). But once it is posited that a plaintiff has personally suffered a "*de facto*" injury, *i.e.*, an injury in fact, it is hard to see why the presence or absence of a statute authorizing suit has a bearing on the question whether the court has Article III jurisdiction as opposed to the question whether the plaintiff has a cause of action. . . .

[T]he majority tells us that the standing outcome "*might* change" if the Federal Government "*wholly* abandoned its statutory responsibilities," but that statement is both equivocal and vague. . . . Suppose the Federal Government announced that it would obey 80% of the immigration laws or 70% of the environmental laws. Would the Court say that it had "wholly abandoned" enforcement of these bodies of law? . . .

IV

. . . Congress enacted a law that requires the apprehension and detention of certain illegal aliens whose release, it thought, would endanger public safety. The Secretary of DHS does not agree with that categorical requirement. He prefers a more flexible policy. And the Court's answer today is that the Executive's policy choice prevails unless Congress, by withholding funds, refusing to confirm Presidential nominees, threatening impeachment and removal, etc., can win a test of strength. Relegating Congress to these disruptive measures radically alters the balance of power between Congress and the Executive. . . .

When we have jurisdiction, we have a "virtually unflagging obligation" to exercise that authority. . . . I must respectfully dissent.

Notes and Questions

1. As earlier cases in this chapter show, standing doctrine usually requires that the plaintiff show (1) an injury in fact, that is (2) fairly traceable to the allegedly unlawful actions of the defendant, and (3) likely to be redressed by favorable judicial action. As to each of these three points, what was the holding of the Court? As to each point, did the Court find the point to be satisfied, not satisfied, or did the Court not consider the point at all?

2. The Court says that "the alleged injury must be legally and judicially cognizable." Is that part of the usual test, or does it create a new rule? Is it consistent with the "injury in fact" test?

3. The opinions cite heavily to *Linda R.S.*, discussed in Section 2.C.3, *supra*. How is *Linda R.S.* like or unlike this case? Does *Linda R.S.* support the Court's opinion? Is the majority correct that the case establishes that a party "lacks a judicially cognizable interest in the prosecution ... of another," or is Justice Barrett correct that the case is only about redressability?

4. The Court also relies on *Heckler v. Chaney*, 470 U.S. 821 (1985), a case usually considered in Administrative Law. In that case, state prisoners who had been sentenced to death by lethal injection petitioned the federal Food and Drug Administration to stop their executions. The prisoners asserted that the drugs that were going to be used to kill them, although approved by the FDA for other purposes, had not been shown to be "safe and effective" for the purpose of human executions, as they alleged was required by the Food and Drug Act. The FDA declined to take action. In its response to the prisoners' request, it stated that its jurisdiction to stop state execution processes was doubtful. It also stated that even if it had clear jurisdiction, it would decline to take action as a matter of enforcement discretion. The FDA noted that it usually did not take enforcement actions with regard to "off-label" uses of approved drugs unless there was "a serious danger to the public health or a blatant scheme to defraud," neither of which was present in the off-label use of approved drugs for executions.

The prisoners sued for judicial review of the FDA's refusal to take enforcement action. When the case reached the Supreme Court, the Court held that "agency decisions to refuse enforcement" are "presumptively unreviewable." However, as Justice Barrett observes, the Court did not hold that such a case was nonjusticiable. Rather, the Court held that suits challenging agency exercises of enforcement discretion presumptively fall within 5 U.S.C. § 701(a)(2) of the Administrative Procedure Act, which provides that judicial review is not available of action that is "committed to agency discretion by law." The Court also said, "we emphasize that the decision is only presumptively unreviewable; the presumption may be rebutted where the substantive statute has provided guidelines for the agency to follow in exercising its enforcement powers." The Court also mentioned several other circumstances in which its holding that there could be no judicial review of an agency's failure to take enforcement action might not apply, including when an agency declined to act on the sole ground that it believed it lacked jurisdiction, or where an agency had adopted a general policy of nonenforcement that was "so extreme as to amount to an abdication of its statutory responsibilities."

Does this decision support the majority's conclusion that Article III prohibits judicial review of the federal government's "arrest and prosecution policies"?

5. The Justices cite *Massachusetts v. EPA*, 549 U.S. 497 (2007), in which the plaintiffs were states, including Massachusetts, that alleged that the EPA had violated the Clean Air Act by denying a petition to create a rule that would regulate greenhouse gases. The Court held that Massachusetts had standing to bring this claim. The agency's failure to act injured Massachusetts by, among other things, contributing to rises in sea levels that subsumed coastal lands owned by the state. The Court distinguished *Heckler v. Chaney*, saying that "[t]here are key differences between a denial of a petition for rulemaking and an agency's decision not to

initiate an enforcement action." The Court also indicated that states are entitled to "special solicitude" in standing analysis.

Is the Court's decision in *United States v. Texas* consistent with *Massachusetts v. EPA*?

6. The Court also cites Article II's assignment of the "executive Power" to the President. It notes that "[u]nder Article II, the Executive Branch possesses authority to decide 'how to prioritize and how aggressively to pursue legal actions against defendants who violate the law.' " Accepting this as true, does it suggest that the plaintiff states lack *standing* to sue? Or is it a point more appropriately considered on the merits, i.e., in determining what obligations the allegedly violated statutes impose on the Executive to arrest specified noncitizens?

5. The Requirements of Standing Doctrine — Zone of Interests

Add as note 8 on p. 123:

8. In *Food & Drug Admin. v. R. J. Reynolds Vapor Co.*, 145 S. Ct. 1984 (2025), in an opinion by Justice Barrett, the Supreme Court held that where a statute other than the APA allows suit by "any person adversely affected" by a specified kind of federal agency action, there is a "presumption that the term 'adversely affected' carries the same meaning outside the APA as in it." The Court held, accordingly, that a *retailer* of tobacco products had "zone of interests" standing to seek review of the FDA's denial of an application by a *manufacturer* of e-cigarettes to be allowed to market its products. The retailers were adversely affected because they were unable to sell the proposed product. The Court said that "[g]iven this significant, direct impact on retailers, their interests are not 'so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit.' " Justice Jackson, dissenting for herself and Justice Sotomayor, said that the zone of interest test required the Court "to examine exactly whom Congress intended to protect under the relevant statutory provisions," and that the relevant statutory provision was the one "whose violation forms the legal basis for" the complaint. In this case, she said, the relevant provision was the one establishing an adjudicatory process for the approval of new tobacco products, which involved only the manufacturer and the FDA, not anyone else.

6. Third-Party Standing

Add as note 3 on page 130:

3. As *Barrows v. Jackson* and *Craig v. Boren* show, third-party standing cases typically involve a party who has suffered a clear *injury*; the question is whether that party can assert another party's *rights*. But in *Biden v. Nebraska*, 143 S. Ct. 2355 (2023), the question was whether a plaintiff could assert an injury arguably suffered by a third party. During the COVID pandemic, President Biden's Secretary of Education purported to cancel $10,000 of student loan debt for most borrowers who owed such debt to the federal government (and $20,000 for such borrowers who had received a Pell grant). Several states sued and alleged that the Secretary had exceeded his powers under a statute that authorized the Secretary to "waive or modify"

provisions of the student loan program during a national emergency. Among other things, the plaintiff states noted that the state of Missouri had created a corporation called MOHELA, which earned fees by servicing federal student loans, and that MOHELA would be injured by the loss of such fees as a result of the Secretary's allegedly unlawful action.

The Supreme Court held that Missouri had standing. MOHELA, the Court observed, is a public instrumentality of the state and was subject to the state's "supervision and control." Its board "consists of two state officials and five members appointed by the Governor and approved by the Senate." The Court concluded that an injury to MOHELA was necessarily an injury to the state of Missouri. Justice Kagan, dissenting for herself and two other Justices, argued that MOHELA was a separate juridical entity and that a financial loss for MOHELA would not cause any financial or other detriment to Missouri. She also noted that MOHELA might have sued on its own behalf and had chosen not to.

Add at the end of note 3 on p. 136: *See also United States v. Hansen*, 143 S. Ct. 1932 (2023). The case reaffirmed that "[t]o justify facial invalidation, a law's unconstitutional applications must be realistic, not fanciful, and their number must be substantially disproportionate to the statute's lawful sweep." It also held that when interpreting a potentially overbroad statute, a court should, where in doubt, apply the "principle of constitutional avoidance" and prefer a narrow, but fairly possible, construction of ambiguous provisions that avoids an overbreadth problem.

Add as new section (called "C2" for now) on p. 137:

C2. Limitations on Federal Courts' Remedial Powers

If a plaintiff presents a federal court with a justiciable case challenging governmental action and the court concludes that the challenged action is unlawful, what remedy may the court award? In particular, may the court order the government to cease engaging in the unlawful action with respect to anyone? Or is the court limited to providing relief to the plaintiff or plaintiffs who brought the case?

TRUMP v. CASA, INC.
145 S. Ct. 2540 (2025)

JUSTICE BARRETT delivered the opinion of the Court.

The United States has filed three emergency applications challenging the scope of a federal court's authority to enjoin Government officials from enforcing an executive order. Traditionally, courts issued injunctions prohibiting executive officials from enforcing a challenged law or policy only against the plaintiffs in the suit. The injunctions before us today reflect a more recent development: district courts asserting the power to prohibit enforcement of a law or policy against *anyone*. These injunctions—known as "universal injunctions"—likely exceed the equitable authority that Congress has granted to federal courts.[1] We therefore grant

[1] Such injunctions are sometimes called "nationwide injunctions," reflecting their use by a single district court to bar the enforcement of a law anywhere in the Nation. But the term "universal" better captures how these injunctions

the Government's applications . . . .

I

[On January 20, 2025, President Trump issued Executive Order 14160, *Protecting the Meaning and Value of American Citizenship*. The Order stated that a person born in the United States does not acquire U.S. citizenship if at the time of the person's birth the person's mother was either unlawfully present in the United States or was present on a lawful but temporary basis (such as a student or tourist visa) and the person's father was not a United States citizen or lawful permanent resident. The Order stated it to be U.S. policy that no federal agency should issue or accept documents recognizing U.S. citizenship in such persons (although the Order was not retroactive; it was limited to persons born at least 30 days after the date of the Order).

[In three separate cases in three different federal district courts, plaintiffs, who included individuals, organizations, and states, asserted that E.O. 14160 violated the Fourteenth Amendment's provision that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside," and 8 U.S.C. § 1401, which provides: "The following shall be nationals and citizens of the United States at birth: (a) a person born in the United States, and subject to the jurisdiction thereof . . . ." Each district court held that the plaintiffs were likely to prevail and entered a preliminary injunction prohibiting application of E.O. 14160 to anyone. The government asked a court of appeals to stay each preliminary injunction. Each court of appeals denied this request. The government then asked the Supreme Court to stay each preliminary injunction on the ground that the relief should be limited to the parties. The government did not seek review of whether E.O. 14160 was lawful, and the Supreme Court did not reach that issue.]

III

A

The Government is likely to succeed on the merits . . . regarding the scope of relief. . . . A universal injunction can be justified only as an exercise of equitable authority, yet Congress has granted federal courts no such power.[4]

The Judiciary Act of 1789 endowed federal courts with jurisdiction over "all suits ... in equity," . . . and still today, this statute "is what authorizes the federal courts to issue equitable remedies." . . . Though flexible, this equitable authority is not freewheeling. We have held that the statutory grant encompasses only those sorts of equitable remedies "traditionally accorded by courts of equity" at our country's inception. . . . We must therefore ask whether universal injunctions are sufficiently "analogous" to the relief issued " 'by the High Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act.' " . . .

The answer is no: Neither the universal injunction nor any analogous form of relief was available in the High Court of Chancery in England at the time of the founding. . . .

[In 18th-century England, s]uits in equity were brought by and against individual parties. . . .

---

work. Even a traditional, parties-only injunction can apply beyond the jurisdiction of the issuing court. . . . The difference between a traditional injunction and a universal injunction is not so much where it applies, but whom it protects: A universal injunction prohibits the Government from enforcing the law against anyone, anywhere. . . .

[4] Our decision rests solely on the statutory authority that federal courts possess under the Judiciary Act of 1789. We express no view on the Government's argument that Article III forecloses universal relief.

Injunctions were no exception; there were "sometimes suits to restrain the actions of *particular* officers against *particular* plaintiffs." . . . And in certain cases, the "Attorney General could be a defendant." . . .The Chancellor's remedies were also typically party specific. "As a general rule, an injunction" could not bind one who was not a "party to the cause." . . . [U]nder longstanding equity practice in England, there was no remedy "remotely like a national injunction." . . .

Nor did founding-era courts of equity in the United States chart a different course. . . . Consider *Scott* v. *Donald*, [165 U.S. 107 (1897),] where the plaintiff successfully challenged the constitutionality of a law on which state officials had relied to confiscate alcohol that the plaintiff kept for personal use. . . . Although the plaintiff sought an injunction barring enforcement of the law against both himself and anyone else "whose rights [were] infringed and threatened" by it, this Court permitted only a narrower decree between "the parties named as plaintiff and defendants." . . .

In the ensuing decades, we consistently rebuffed requests for relief that extended beyond the parties. . . . [U]niversal injunctions were not a feature of federal-court litigation until sometime in the 20th century. . . . The D. C. Circuit issued what some regard as the first universal injunction in 1963. See *Wirtz* v. *Baldor Elec. Co.*, 337 F. 2d 518, 535 (enjoining the Secretary of Labor "with respect to the entire [electric motors and generators] industry," not just the named plaintiffs to the lawsuit).[7] Yet such injunctions remained rare until the turn of the 21st century, when their use gradually accelerated. . . . The bottom line? The universal injunction was conspicuously nonexistent for most of our Nation's history. Its absence from 18th- and 19th-century equity practice settles the question of judicial authority. . . .

"[E]quity is flexible." . . . At the same time, its "flexibility is confined within the broad boundaries of traditional equitable relief.". . . A modern device need not have an exact historical match, but . . . it must have a founding-era antecedent. . . . Because the universal injunction lacks a historical pedigree, it falls outside the bounds of a federal court's equitable authority under the Judiciary Act.[10] . . .

B

Respondents raise several counterarguments . . . .

1

. . . [R]espondents claim that universal injunctive relief *does* have a founding-era forebear: the decree obtained on a "bill of peace," which was a form of group litigation permitted in English courts. . . . This bill allowed the Chancellor to consolidate multiple suits that involved . . . "some kind of common claim that multiple plaintiffs could have against a single defendant." . . .

---

[7] There is some dispute about whether *Wirtz* was the first universal injunction. Professor Mila Sohoni points to other possible 20th-century examples, including *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624 (1943), *Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925), and *Lewis Publishing Co.* v. *Morgan*, 229 U. S. 288 (1913). . . . Regardless, under any account, universal injunctions postdated the founding by more than a century[.] . . . [E]quitable authority exercised under the Judiciary Act must derive from founding-era practice. . . .

[10] Nothing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action. See 5 U.S.C. § 706(2) (authorizing courts to "hold unlawful and set aside agency action").

The analogy does not work. True, "bills of peace allowed [courts of equity] to adjudicate the rights of members of dispersed groups without formally joining them to a lawsuit through the usual procedures." . . . Even so, their use was confined to limited circumstances. . . . Unlike universal injunctions, which reach *anyone* affected by legislative or executive action—no matter how large the group or how tangential the effect—a bill of peace involved a "group [that] was small and cohesive," and the suit did not "resolve a question of legal interpretation for the entire realm." . . .

The bill of peace lives in modern form, but not as the universal injunction. It evolved into the modern class action, which is governed in federal court by Rule 23 of the Federal Rules of Civil Procedure. . . . And while Rule 23 is in some ways "more restrictive of representative suits than the original bills of peace," . . . it would still be recognizable to an English Chancellor. . . .

The taxpayer suit is a similarly inadequate historical analogy. . . . In a successful taxpayer suit, a court would enjoin the collection of an unlawful tax against "taxpayers joined as co-plaintiffs, or by one taxpayer suing on behalf of himself and all others similarly situated." . . . To be sure, some state courts would occasionally "enjoin the enforcement and collection" of taxes against an "entire community," even when a "single taxpayer su[ed] on his own account." . . . But the practice of extending relief "with respect to any taxpayer" was not adopted by state courts until the mid-19th century, and even then, not all states were willing to provide such sweeping relief. . . . This post-founding practice of some state courts thus sheds minimal light on federal courts' equitable authority under the Judiciary Act. What is more, in *Frothingham* [*v. Mellon*, 262 U.S. 447 (1923)], we refused to allow a single taxpayer to challenge a federal appropriations act. . . . That counsels against placing much, if any, reliance on taxpayer suits as justification for the modern universal injunction.

2

Respondents contend that universal injunctions—or at least *these* universal injunctions—are consistent with the principle that a court of equity may fashion a remedy that awards complete relief. . . . We agree that the complete-relief principle has deep roots in equity. But . . . "[c]omplete relief " is not synonymous with "universal relief." It is a narrower concept: The equitable tradition has long embraced the rule that courts generally "may administer complete relief *between the parties*." . . . While party-specific injunctions sometimes "advantag[e] nonparties," . . . they do so only incidentally.

Consider an archetypal case: a nuisance in which one neighbor sues another for blasting loud music at all hours of the night. To afford the plaintiff complete relief, the court has only one feasible option: order the defendant to turn her music down—or better yet, off. That order will necessarily benefit the defendant's surrounding neighbors too; there is no way "to peel off just the portion of the nuisance that harmed the plaintiff." . . . But while the court's injunction might have the *practical effect* of benefiting nonparties, "that benefit [is] merely incidental."[12] . . . As a matter of law, the injunction's protection extends only to the suing plaintiff—as evidenced by the fact that only the plaintiff can enforce the judgment against the defendant responsible for the nuisance. If the nuisance persists, and another neighbor wants to shut it down, she must file her own suit.

The individual and associational respondents are therefore wrong to characterize the

[12] There may be other injuries for which it is all but impossible for courts to craft relief that is complete *and* benefits only the named plaintiffs. See, *e.g.*, *Shaw* v. *Hunt*, 517 U. S. 899 (1996) (racially gerrymandered congressional maps).

universal injunction as simply an application of the complete-relief principle. Under this principle, the question is not whether an injunction offers complete relief to *everyone* potentially affected by an allegedly unlawful act; it is whether an injunction will offer complete relief *to the plaintiffs before the court*. . . . [P]rohibiting enforcement of the Executive Order against the child of an individual pregnant plaintiff will give that plaintiff complete relief: Her child will not be denied citizenship. Extending the injunction to cover all other similarly situated individuals would not render *her* relief any more complete.

The complete-relief inquiry is more complicated for the state respondents, because the relevant injunction does not purport to directly benefit nonparties. . . . [T]he District Court for the District of Massachusetts decided that a universal injunction was necessary to provide the States *themselves* with complete relief. . . . As the States see it, their harms—financial injuries and the administrative burdens flowing from citizen-dependent benefits programs—cannot be remedied without a blanket ban on the enforcement of the Executive Order. . . . Children often move across state lines or are born outside their parents' State of residence. . . .[Therefore], the States say, a "patchwork injunction" would . . . require them to track and verify the immigration status of the parents of every child, along with the birth State of every child for whom they provide certain federally funded benefits. . . .

The Government—unsurprisingly—sees matters differently. . . . After all, to say that a court *can* award complete relief is not to say that it *should* do so. Complete relief is not a guarantee—it is the maximum a court can provide. And in equity, "the broader and deeper the remedy the plaintiff wants, the stronger the plaintiff's story needs to be." . . . [T]he Government contends that narrower relief is appropriate. For instance, the District Court could forbid the Government to apply the Executive Order within the respondent States, including to children born elsewhere but living in those States. . . . Or, the Government says, the District Court could direct the Government to "treat covered children as eligible for purposes of federally funded welfare benefits." . . .

We decline to take up these arguments in the first instance. The lower courts should determine whether a narrower injunction is appropriate; we therefore leave it to them to consider these and any related arguments.

3

Respondents also defend universal injunctions as a matter of policy. They argue that a universal injunction is sometimes the only practical way to quickly protect groups from unlawful government action. . . . And they suggest that forcing plaintiffs to proceed on an individual basis can result in confusion or piecemeal litigation that imposes unnecessary costs on courts and others. . . .

The Government advances policy arguments running the other way. . . . [T]he Government asserts . . . that universal injunctions incentivize forum shopping, since a successful challenge in one jurisdiction entails relief nationwide. . . . In a similar vein, the Government observes that universal injunctions operate asymmetrically: A plaintiff must win just one suit to secure sweeping relief. But to fend off such an injunction, the Government must win everywhere. . . .

. . . As with most disputed issues, there are arguments on both sides. But as with most questions of law, the policy pros and cons are beside the point. Under our well-established precedent, the equitable relief available in the federal courts is that "traditionally accorded by courts of equity" at the time of our founding. . . . Nothing like a universal injunction was available at the founding, or for that matter, for more than a century thereafter. Thus, under the

Judiciary Act, federal courts lack authority to issue them.

C

JUSTICE JACKSON . . . offers a vision of the judicial role that would make even the most ardent defender of judicial supremacy blush. In her telling, the fundamental role of courts is to "order everyone (including the Executive) to follow the law—full stop." . . .

JUSTICE JACKSON's argument . . . is at odds with more than two centuries' worth of precedent, not to mention the Constitution itself. . . . JUSTICE JACKSON decries an imperial Executive while embracing an imperial Judiciary.

. . . [T]he Executive has a duty to follow the law. But the Judiciary does not have unbridled authority to enforce this obligation. . . . Observing the limits on judicial authority—including, as relevant here, the boundaries of the Judiciary Act of 1789—is required by a judge's oath to follow the law. . . .

The Government's applications to partially stay the preliminary injunctions are granted, but only to the extent that the injunctions are broader than necessary to provide complete relief to each plaintiff with standing to sue. The lower courts shall move expeditiously to ensure that, with respect to each plaintiff, the injunctions comport with this rule and otherwise comply with principles of equity. . . .

[Concurring opinions by Justice Thomas, Justice Alito, and Justice Kavanaugh are omitted.]

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

. . . [Justice Sotomayor argued that Executive Order 14160 is clearly unconstitutional. She noted that the government did not even ask the Supreme Court to review the lower courts' rulings on this issue, but instead asked the Court to hold that "no matter how illegal a law or policy, courts can never simply tell the Executive to stop enforcing it against anyone." She characterized the government's strategy as "gamesmanship" and stated that the Court "shamefully . . . plays along." With regard to the issue of appropriate relief, she said:]

III

[U]niversal injunctions are consistent with long-established principles of equity. . . . What is more, these cases do not even squarely present the legality of universal injunctions. That is because, even if the majority were right that injunctions can only offer "complete relief *to the plaintiffs before the court*," . . . each of the lower courts here correctly determined that the nationwide relief they issued was necessary to remedy respondents' injuries completely. . . .

Equity courts arose because of the inflexibility of the common-law system; their purpose was to look beyond formal writs and provide remedies where the common law gave inadequate relief. . . . [E]quity was meant "to give remedy in cases where none before was administered." . . .

Adaptability has always been a hallmark of equity, especially with regard to the scope of its remedies. While common-law courts were "compelled to limit their inquiry to the very parties in the litigation before them," equity courts could "adjust the rights of all, however numerous," and "adapt their decrees to all the varieties of circumstances, which may arise, and adjust them to all the peculiar rights of all the parties in interest." J. Story, Commentaries on Equity Jurisprudence § 28, pp. 27–28 (2d ed. 1839). . . . [E]quity's "constant aim" was "to do complete justice." . . . Accordingly, equity courts could "decid[e] upon and settl[e] the rights of all persons interested in

the subject-matter of the suit . . .”

[E]quity courts . . . “constantly decline[d] to lay down any rule which shall limit their power and discretion as to the particular cases, in which such injunctions shall be granted, or withheld.” . . . Equity courts needed flexibility to craft injunctions for particular cases, as it was “impossible to foresee all the exigencies of society which may require their aid and assistance to protect rights or redress wrongs.” . . .

In their pursuit of complete justice, equity courts could award injunctive and other equitable relief to parties and nonparties alike. For centuries, they did so through what was known as “bills of peace.”. . . Bills of peace issued in cases “ ‘where the parties [were] very numerous, and the court perceive[d] that it [would] be almost impossible to bring them all before the court; or where the question is of general interest, and a few may sue for the benefit of the whole.’ ” . . . In such cases, a court could “grant [equitable relief] without making other persons parties,” instead considering them “quasi parties to the record, at least for the purpose of taking the benefit of the decree, and of entitling themselves to other equitable relief, if their rights [were] jeopard[iz]ed.” . . .

Early American courts embraced bills of peace and extended their logic to cases “which [were] not technically ‘bills of peace,’ but ‘[were] analogous to,’ or ‘within the principle’ of such bills.” . . . One example was taxpayer suits, which allowed courts to enjoin universally the enforcement of a challenged tax. . . . Even “a single taxpayer suing on his own account,” if victorious, could enjoin the collection of a tax against anyone. . . .

Federal courts have also exercised equitable authority to enjoin universally federal and state laws for more than a century. For instance, before deciding the constitutionality of a new federal law in *Lewis Publishing Co.* v. *Morgan*, 229 U. S. 288 (1913), this Court entered an order blocking the law’s enforcement against parties and nonparties. See M. Sohoni, The Lost History of the “Universal” Injunction, 133 Harv. L. Rev. 920, 944–946 (2020). . . . In *Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925), too, this Court affirmed a universal injunction of Oregon’s compulsory public schooling law. . . .

Cases like *Lewis* and *Pierce* were not outliers. Throughout the early 20th century, federal courts granted universal injunctions even when a narrower remedy would have sufficed to redress the parties’ injuries. See, *e.g.*, *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624, 642 (1943) (affirming an injunction that shielded the plaintiff class of Jehovah’s Witnesses, and any other children with religious scruples, from complying with a state law requiring children to salute the American flag) . . . . It is certainly true that federal courts have granted more universal injunctions of federal laws in recent decades. But the issuance of broad equitable relief intended to benefit parties and nonparties has deep roots in equity’s history and in this Court’s precedents.

The universal injunctions of the Citizenship Order fit firmly within that tradition. The right to birthright citizenship is “clear,” the Citizenship Order is an “ ‘illegal act,’ ” and without the “ ‘preventive process of injunction,’ ” the right will be “ ‘irreparably injured.’ ”. . . Complete justice, the “constant aim” of equity, . . . demands a universal injunction . . . .

The majority’s contrary reasoning falls flat. . . . [T]he Court claims that the English Chancellor’s remedies were “typically” party specific, and emphasizes that party-specific principles have permeated this Court’s understanding of equity. . . . [But, a]s the majority must itself concede, injunctions issued by English courts of equity were . . . not always . . . party specific. . . . After all, bills of peace, for centuries, allowed English courts to adjudicate the rights of parties not before it, and to award remedies intended to benefit entire affected communities. Taxpayer suits, too, could lead to a complete injunction of a tax, even when only a single

plaintiff filed suit. . . .

That bills of peace bear some resemblance to modern day Federal Rule of Civil Procedure 23 class actions does not mean they cannot also be a historical analogue to the universal injunction. . . . [T]he English Chancery Court recognized that principles of equity permit granting relief to nonparties. The history of bills of peace makes that apparent, particularly because they went beyond what Rule 23 permits. . . . They are thus a common ancestor to both class actions and universal injunctions.

Most critically, the majority fundamentally misunderstands the nature of equity by freezing in amber the precise remedies available at the time of the Judiciary Act. Even as it declares that " '[e]quity is flexible,' " . . . the majority ignores the very flexibility that historically allowed equity to secure complete justice where the rigid forms of common law proved inadequate. . . . The Judiciary Act of 1789 codified equity itself, not merely a static list of remedies. . . .

Even the majority's view of the law cannot justify issuance of emergency relief to the Government in these cases, for the majority leaves open whether these particular injunctions may pass muster under its ruling. . . . [T]he majority [agrees that c]ourts may award an equitable remedy when it is "necessary to provide complete relief to the plaintiffs" . . . [and] that, in some cases, complete relief will require a broad remedy that necessarily benefits nonparties. . . .

[In these cases, e]ach District Court found that a universal injunction was the only feasible option to redress fully respondents' injuries. See 763 F. Supp. 3d, at 746 (concluding that "[o]nly a nationwide injunction will provide complete relief to the plaintiffs" because the organizational plaintiffs have " 'over 680,000 members ... who reside in all 50 U.S. states and several U.S. territories' " and " '[h]undreds or even thousands' " of those members " 'will give birth to children in the United States over the coming weeks and months' " (alterations in original)); 765 F. Supp. 3d, at 1153 ("[A] geographically limited injunction would be ineffective, as it would not completely relieve [the plaintiff States] of the Order's financial burden(s)"); 766 F. Supp. 3d, at 288 (explaining that "injunctive relief limited to the State plaintiffs [would be] inadequate" because it would "fai[l] in providing complete relief to the State plaintiffs").

. . . The majority recognizes, correctly, that the Massachusetts District Court "decided that a universal injunction was necessary to provide the States *themselves* with complete relief." . . . And the majority does not dispute the basis for those decisions: "Children often move across state lines or are born outside their parents' State of residence," and "th[is] cross-border flow" would make an injunction protecting only children born in the party States "unworkable." . . . A narrower injunction would "require [the States] to track and verify the immigration status of the parents of every child, along with the birth State of every child for whom they provide certain federally funded benefits." . . . Unrebutted record evidence bears this out and shows that the Citizenship Order would irreparably harm the States, even if it does not apply to children born within their boundaries. The Court does not contend otherwise. That should be the end of the matter. . . .

As the Maryland District Court found, " 'hundreds or even thousands' " of the associational respondents' members, who reside in all 50 States, " 'will give birth to children in the United States over the coming weeks and months.' ". . . [A]nything less than a nationwide injunction creates a risk that the Government, inadvertently or intentionally, will enforce the Citizenship Order against some of the plaintiffs' children before this Court rules definitively on the Order's lawfulness. . . . The risk of noncompliance is also particularly stark here, . . . given the Government's repeated insistence that it need not provide notice to individuals before their sudden deportations. . . .

The Court's decision is nothing less than an open invitation for the Government to bypass the Constitution. . . . Not even a decision from this Court would necessarily bind the Government to stop, completely and permanently, its commission of unquestionably unconstitutional conduct. The majority interprets the Judiciary Act, which defines the equity jurisdiction for all federal courts, this Court included, as prohibiting the issuance of universal injunctions (unless necessary for complete relief). What, besides equity, enables this Court to order the Government to cease completely the enforcement of illegal policies? The majority does not say. . . .

I dissent.

JUSTICE JACKSON, dissenting.

I agree with every word of JUSTICE SOTOMAYOR's dissent. I write separately to emphasize a key conceptual point: The Court's decision to permit the Executive to violate the Constitution with respect to anyone who has not yet sued is an existential threat to the rule of law. . . .

[This case raises a] basic question of enormous legal and practical significance: May a federal court in the United States of America order the Executive to follow the law? . . . To ask this question is to answer it. In a constitutional Republic such as ours, a federal court has the power to order the Executive to follow the law—and it must. . . . [T]he Constitution of the United States and the statutes that the People's representatives have enacted govern in our system of government. Thus, everyone, from the President on down, is bound by law. By duty and nature, federal courts say what the law is (if there is a genuine dispute), and require those who are subject to the law to conform their behavior to what the law requires. This is the essence of the rule of law. . . .

Those who birthed our Nation limited the power of government to preserve freedom. . . . The distribution of power between the Judiciary and the Executive is of particular importance to the operation of a society governed by law. Made up of " 'free, impartial, and independent' " judges and justices, the Judiciary checks the political branches of Government by explaining what the law is and "securing obedience" with it. . . . The federal courts were thus established "not only to decide upon the controverted rights of the citizens as against each other, but also upon rights in controversy between them and the government." . . .

In this country, the Executive does not stand above or outside of the law. Consequently, when courts are called upon to adjudicate the lawfulness of the actions of the other branches of Government, the Judiciary plays "an essential part of the democratic process." . . .

The power to compel the Executive to follow the law is particularly vital where the relevant law is the Constitution. . . .

The pillar upon which today's ruling rests is the majority's contention that the remedial power of the federal courts is limited to granting "complete relief " to the parties. . . . And the majority's sole basis for that proposition is the practice of the High Court of Chancery in England. . . . [E]ven if the majority is correct that courts in England at the time of the founding were so limited . . . why would courts in *our* constitutional system be limited *in the same way*?

The Founders of the United States of America squarely rejected a governing system in which the King ruled all, and all others, including the courts, were his subordinates. In our Constitution-centered system, the People are the rulers and we have the rule of law. So, it makes little sense to look to the relationship between English courts and the King for guidance on the power of our Nation's Judiciary vis-à-vis its Executive. . . . Federal courts entertain suits against the Government claiming constitutional violations. Thus, the function of the courts—both in theory and in practice—necessarily includes announcing what the law requires in such suits for the

benefit of all who are protected by the Constitution, not merely doling out relief to injured private parties. . . .

When a court is prevented from enjoining the Executive universally after the Executive establishes a universal practice of stripping people's constitutional rights, anyone who is entitled to the Constitution's protection but will instead be subjected to the Executive's whims is improperly divested of their inheritance. The Constitution is flipped on its head, for its promises are essentially nullified.[8] So, rather than having a governing system characterized by protected rights, the default becomes an Executive that can do whatever it wants to whomever it wants, unless and until each affected individual affirmatively invokes the law's protection. . . .

Today's ruling allows the Executive to deny people rights that the Founders plainly wrote into our Constitution, so long as those individuals have not found a lawyer or asked a court in a particular manner to have their rights protected. . . . As a result, the Judiciary—the one institution that is solely responsible for ensuring our Republic endures as a Nation of laws—has put both our legal system, and our system of government, in grave jeopardy. . . .

Notes and Questions

1. The Court's decision relies heavily on the 18th-century practices of England's Court of Equity (also known as the Court of Chancery), which emerged as a response to problems with the English courts of law. The courts of law were too procedurally rigid and in most cases could award only money damages, not injunctive relief (that is, relief that took the form of ordering a defendant to do something or to stop doing something). Equity was presided over by the King's Chancellor, who was more concerned with fairness and justice than with procedural niceties, and who could award injunctive relief. Law and Equity existed as separate courts in England until the 1870s, so a plaintiff bringing suit had to decide whether to sue at law or in equity—there was no way to combine the two into a single proceeding.

The practice of keeping law and equity separate was imported into the United States, but it came to be regarded as clumsy and inefficient. States began merging law and equity in 1850. In 1938, the Federal Rules of Civil Procedure merged law and equity in the federal system. Federal Rule 2 provides for a unified "civil action" in which a plaintiff may obtain all remedies that previously could have been obtained either at law or in equity. As a result, federal plaintiffs today do not need to choose between these two ways of bringing suit. Still, as *Trump v. CASA* shows, historic practices in courts of law and equity at the time of the Founding have consequences for federal courts today.[*]

2. Section 11 of the First Judiciary Act gave federal courts authority over suits "in equity" that were within the diversity jurisdiction, or where the U.S. was the plaintiff. In 1875, this equitable authority was extended to other bases of federal jurisdiction, including federal question jurisdiction. Act of Mar. 3, 1875. c. 137, § 1, 18 Stat. 470. The Supreme Court has long held that "[t]he 'jurisdiction' thus conferred . . . is an authority to administer in equity suits the principles of the system of judicial remedies which had been devised and was being administered

[*] The most important historic practice, which you may have studied in Civil Procedure, was that 18th-century English law courts tried cases by jury, but Equity did not. Because the Seventh Amendment to the U.S. Constitution guarantees that the right of jury trial shall be "preserved" in actions at law, it is often still necessary to consider whether a present-day federal action corresponds to an historical action at law or to one in equity in order to determine whether a right of jury trial applies. *See*, *e.g.*, *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500 (1959).

by the English Court of Chancery at the time of the separation of the two countries." *Atlas Life Ins. Co. v. W. I. S., Inc.*, 306 U.S. 563, 568 (1939). How rigidly should a federal court's power to grant equitable relief today be limited to the powers exercised by the English Court of Equity in the 18th century? Should a federal court's powers be limited by *typical* equity cases? What consideration should be given to less common equity cases, such as the "bill of peace"? Also, given that one of the key reasons for the creation of the English Court of Equity was to provide innovative remedies that were not available in courts of law, should a federal court today be able to provide innovative equitable remedies? Is Justice Sotomayor right to suggest that "[t]he Judiciary Act of 1789 codified equity itself, not merely a static list of remedies"?

3. Footnote 4 of the Court's opinion states that the decision "rests solely on the statutory authority that federal courts possess under the Judiciary Act of 1789" and does not determine whether Article III bars universal injunctive relief. Does the Court's opinion leave room for a later case to determine that Article III permits such relief? What would happen if Congress passed a statute expressly granting federal courts the power to issue universal injunctive relief?

4. Even assuming that the Court is correct that (a) the English Court of Equity could provide only such relief as was necessary to remedy the injuries of the particular plaintiff or plaintiffs before the court in a given case, and (b) this limitation applies to U.S. federal courts today, all of the Justices nonetheless agree that in some cases it is impossible to remedy the plaintiff's injuries without providing a remedy that "incidentally" benefits the public at large. Consider, for example, an individual plaintiff who sues a city and alleges that the city's school system or transportation system is unconstitutionally segregated by race or gender. If the plaintiff prevailed, would an order that the defendant allow *the plaintiff* to attend or use all parts of the system, but that imposed no obligation on the defendant with regard to anyone other than the plaintiff, cure the plaintiff's injury? Could the plaintiff's injury be cured by any order short of an order that the system be desegregated for everyone?

How does this point apply to *Trump v. CASA*? The Court remanded the case for further consideration of the proper remedy. Some of the plaintiffs were states, which claimed that E.O. 14160 would injure them by compelling them to expend extra resources administering benefit programs available only to U.S. citizens. The states argued that an order prohibiting the enforcement of E.O. 14160 with respect to persons born only in the plaintiff states would be insufficient to cure their injury, because they would have to expend resources to track the citizenship of persons born in other U.S. states who later move to the plaintiff states. Is this convincing? What remedy is needed to cure the injury of the plaintiff states?

How about the plaintiff organizations, some of which had hundreds of thousands of members residing throughout the U.S.? Would a district court order that E.O. 14160 not be applied to members of such an organization, but that provided no relief as to others, cure the plaintiff's injury? How likely is it that the government would be able to comply with such an order?

5. The Court observes that a class action might allow a district court to award "universal" relief, but emphasizes that such an action would have to comply with the requirements of Federal Rule 23. Less than a month after the Court's decision, a district court provisionally certified a class of all persons affected by E.O. 14160 and preliminarily enjoined the enforcement of the Order with regard to the whole class. *Barbara v. Trump*, 2025 WL 1904338 (D.N.H. July 10, 2025). (This injunction was still subject to appeal at the time this Supplement was completed.)

To what extent could class actions suffice to allow courts to require governments to behave lawfully after *Trump v. CASA*? To what extent would stringent enforcement of the Rule 23 requirements likely prevent class actions from serving this purpose?

6. As is mentioned in footnote 10 of the Court's opinion, the Administrative Procedure Act provides that a court conducting judicial review of a federal agency action shall "hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or] (B) contrary to constitutional right, power, privilege, or immunity. . . ." 5 U.S.C. § 706. The Court said it was not resolving the "distinct question" raised by this statute.

Suppose the Department of State adopted a rule providing that it would not issue a U.S. passport to a person who was born in the United States, but who was not a U.S. citizen according to E.O. 14160. If a particular individual who was denied a passport pursuant to the rule sought judicial review and the reviewing court determined that that rule was unconstitutional, could the court "hold unlawful and set aside" the rule? Would the effect of doing so be to prohibit the agency from applying the rule to *anyone*? If so, to what extent does the APA permit evasion of the rule of *Trump v. CASA*? (The President is not an "agency" within the meaning of the APA, *see Franklin v. Massachusetts*, 505 U.S. 788 (1992), and so the APA would not provide for review of E.O. 14160 itself.)

7. Justice Jackson's opinion evidently takes the "public rights" view of the role of the federal courts. Is the Court right to say that Justice Jackson's opinion "is at odds with more than two centuries' worth of precedent"?

D. Mootness

1. The Basic Rule of Mootness

Add as paragraph 7 on p. 143:

7. There is a distinction between an argument that a case is moot because a ruling would have no impact on the parties and an argument that a party is not legally entitled to relief. The latter kind of argument, even if based on a change in circumstances, usually goes to the merits, not to mootness. A purported legal barrier to the relief a party seeks makes a case moot only if the party's claim to the relief is "wholly insubstantial and frivolous." *MOAC Mall Holdings LLC v. Transform Holdco LLC*, 143 S. Ct. 927, 935 n.4 (2023). For example, in *Chafin v. Chafin*, 568 U.S. 165 (2013), the plaintiff received an order from a federal district court that her child be returned from the United States to Scotland pursuant to the Hague Convention on the Civil Aspects of International Child Abduction. The defendant, the child's father, appealed and sought a stay of the order pending appeal. When that stay was denied, the plaintiff removed the child to Scotland. The court of appeals then held that the case was moot because U.S. courts would lack the authority to order the child's "re-return" even if the original return order were reversed. The Supreme Court, however, held that this point went to the merits, not to mootness. As long as the defendant's argument that U.S. courts could issue a re-return order was not "so implausible that it [was] insufficient to preserve jurisdiction," the court of appeals could proceed without

assessing the argument's "prospects for success." Would the case have been moot if, during the pendency of the appeal, the child had died?

2. Exceptions to Mootness Doctrine (or Applications of It?)

c. Voluntary Cessation

Substitute for note 2 on p. 148:

2. The voluntary cessation rule "holds for governmental defendants no less than for private ones." *FBI v. Fikre*, 601 U.S. 234 (2024). In that case, the plaintiff challenged his placement on the federal government's "No Fly List." The Supreme Court held that the government had not mooted the case by removing the plaintiff from the list and stating that it would not put him back on the list "based on the currently available information." The Court emphasized that a defendant has the "formidable" burden of establishing that its challenged conduct cannot reasonably be expected to recur. The Court held that the government had not so established, because it might in the future place the plaintiff on the list based on new information.

Nonetheless, in cases in which a plaintiff challenges the constitutionality of a statute or ordinance and the challenged provision is repealed while the litigation is pending, the Supreme Court has held that the litigation is moot. *E.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. City of New York*, 140 S. Ct. 1525 (2020); *Kremens v. Bartley*, 431 U.S. 119 (1977). Why would such a case not fall within the "voluntary cessation" exception?

E. Ripeness

Add to the end of note 1 on p. 168:

See also 303 Creative LLC v. Elenis, 6 F.4th 1160, 1171–72 (10th Cir. 2021) (allowing a web designer to challenge a statute regulating her ability to enter the wedding website market, which she desired to do but had not yet done, because "Article III does not require the plaintiff to risk an actual arrest, prosecution, or other enforcement action.") (internal quotation omitted), *rev'd on the merits*, 143 S. Ct. 2298 (2023).

F. The Political Question Doctrine

Add at the end of note 1 on p. 199:

In *Alexander v. South Carolina State Conference of the NAACP*, 144 S. Ct. 1221 (2024), another gerrymandering case, the Court noted that partisan gerrymandering claims are nonjusticiable and said that "Thus, as far as the Federal Constitution is concerned, a legislature may pursue partisan ends when it engages in redistricting." Does that indicate that the Constitution imposes no limit at all on partisan gerrymandering?

Updates to Chapter 3

A. "Jurisdiction Stripping"

4. Interpretation of Potential Jurisdiction Stripping Statutes

Add as note 1a on p. 231:

1a. The Court provided a notable application of the presumption of reviewability in *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.* 145 S. Ct. 2006 (2025). The case concerned the Telephone Consumer Protection Act (TCPA), which prohibits sending unsolicited fax advertisements to "telephone facsimile machines" unless accompanied by a notice that recipients can opt out of future faxes. The TCPA provides that recipients of faxes that violate the act may sue the violator for a minimum of $500 per violation.

Plaintiff McLaughlin Chiropractic Associates (McLaughlin) brought a class action in federal district court against defendant McKesson Corp. for alleged violations of the TCPA. Some members of the plaintiff class had received allegedly unlawful faxes from McKesson on traditional fax machines, which print the messages out on paper, but others had received the faxes only via online fax services, which do not create a hard copy.

While the case was pending, the Federal Communications Commission (FCC), at the behest of a company unrelated to the case, issued an order interpreting the term "telephone facsimile machines" in the TCPA as excluding online fax services. This order, if followed, would mean that only plaintiffs who received unlawful faxes on traditional fax machines would have a claim under the TCPA.

FCC orders are reviewable under the Hobbs Act, 28 U.S.C. §§ 2341-2351, which applies to specified orders of several, specified agencies, including the FCC. It provides that review of a covered order can be sought in a federal court of appeals within 60 days after entry of the order. The Hobbs Act also provides that the "court of appeals . . . has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of" covered orders. 28 U.S.C. § 2342.

Plaintiff McLaughlin did not seek judicial review of the FCC's order in a court of appeals. Rather, it asked the district court in which its case against McKesson was already pending to hold that the FCC's order misinterpreted the TCPA. The district court held that it lacked jurisdiction to do so in light of the Hobbs Act's grant of exclusive jurisdiction to courts of appeals. The court of appeals affirmed.

The Supreme Court reversed. Speaking through Justice Kavanaugh, the Court characterized § 2342 as giving courts of appeals exclusive jurisdiction to conduct *pre-enforcement* review of orders covered by the Hobbs Act, but said that § 2342 was "silent" on the question of whether a party could seek judicial review of covered orders in the context of an enforcement action, such as the district court action at issue. The case was therefore subject to the "default rule" that "[i]n an enforcement proceeding, a district court must independently determine for itself whether the agency's interpretation of a statute is correct." This default rule derived from the "presumption of reviewability" established in *Abbott Labs v. Gardner* (cited at the end of *Johnson v. Robison*,

see Casebook p. 231) and from § 703 of the Administrative Procedure Act, which provides that "[e]xcept to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement." 5 U.S.C. § 703.

The Court held that the default rule was not overcome by the Hobbs Act's provision that the court of appeals "has exclusive jurisdiction . . . to determine the validity of" the agency's order. In context, the Court said, that phrase refers only to proceedings in which a court would enter a declaratory judgement declaring the agency's order to be valid or invalid. A district court considering an enforcement proceeding would, by contrast, "simply determine[] the liability of the defendant under the correct interpretation of the statute." The Court observed that § 2342 also gives the court of appeals exclusive jurisdiction to "enjoin, set aside, [or] suspend" the agency's order. These are all forms of *relief*, and the Court applied the interpretive canon *noscitur a sociis* to conclude that the phrase "determine the validity of" must refer to a form of relief as well.

The Court distinguished *Yakus* (Casebook p. 224), in which the applicable statute similarly provided that a court of appeals would have "exclusive jurisdiction to determine the validity of any regulation or order" issued under the statute, on the ground that the statute in that case also stated that, "no [other] court, Federal [or] State, . . . shall have jurisdiction or power to consider the validity of any such regulation [or] order." The Hobbs Act, the Court observed, contains no provision comparable to the latter.

Justice Kagan, writing for herself and two other Justices, dissented. The plaintiff, she said, was asking the district court to "determine the validity of" the agency's order, which the Hobbs Act gave the court of appeals exclusive jurisdiction to do. It was improper, she said, to read the phrase "determine the validity of" as though it said "*issue a declaratory judgment* determining the validity of." The phrase "determine the validity of" was also too clear for its meaning to be changed by the *noscitur a sociis* canon. Justice Kagan also said that 5 U.S.C. § 703 did not support the Court's ruling, because it applies only "[e]xcept to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law."

Does *McLaughlin* apply the presumption of reviewability even more strongly than *Johnson v. Robison*? Is the Hobbs Act really "silent" on the question of whether judicial review of orders such as the FCC order at issue in *McLaughlin* may take place in the context of an enforcement proceeding? Or does the Hobbs Act address that question by providing that the "court of appeals . . . has exclusive jurisdiction . . . to determine the validity of" covered orders and that review must be sought within 60 days?

B. Congress's Power to Vest Article III Business in Other Than Article III Courts

Add as a new principal case at the end of p. 262:

SECURITIES AND EXCHANGE COMMISSION v. JARKESY
144 S. Ct. 2117 (2024)

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

. . . [Three federal statutes, the Securities Act of 1933, the Securities Exchange Act of 1934,

and the Investment Advisers Act of 1940, prohibit fraud in connection with the trading of securities (e.g., stocks and bonds). The Securities and Exchange Commission (SEC), a federal agency, is empowered to enforce these statutes. When the SEC brings an enforcement action under the statutes, it may bring the action as a case in federal court or as an administrative proceeding within the SEC itself. In federal court, an Article III judge presides, the case is governed by the Federal Rules of Civil Procedure and the Federal Rules of Evidence, and the case may be tried by jury. In an administrative proceeding, an Administrative Law Judge (ALJ) typically presides, discovery and evidence are governed by the SEC's Rules of Practice, and there is no jury. The ALJ's decision may be appealed to the SEC Commissioners, and their decision is subject to judicial review, but the court conducting such review is required to treat the SEC's factual findings as "conclusive" if they are supported by "substantial evidence."

[Prior to 2010, the SEC could seek monetary penalties for securities fraud only in a proceeding in court. In 2010 the Dodd-Frank Wall Street Reform and Consumer Protection Act authorized the SEC to impose monetary penalties in its own administrative proceedings.

[In 2013, the SEC brought an enforcement action against George Jarkesy, Jr., and Patriot28, LLC. The agency sought civil monetary penalties and other remedies for alleged securities fraud. The SEC asserted that the defendants, in creating two investment funds, misrepresented the investment strategies they would use, lied about the identity of the funds' broker, and inflated the funds' value to allow higher management fees. The SEC brought the action within the agency. An ALJ issued an initial decision in 2014, and the Commissioners reviewed the decision and released a final order in 2020. The final order required the defendants to cease violating the statutes, to pay a civil monetary penalty of $300,000, and to disgorge about $700,000 in earnings. It also barred defendant Jarkesy from participating in the securities industry.

[The defendants sought judicial review. The U.S. Court of Appeals for the Fifth Circuit held (among other things) that the agency's adjudication of its own complaint violated the defendants' right to trial by jury under the Seventh Amendment to the Constitution. The Supreme Court granted certiorari.]

II

. . . The threshold issue is whether this action implicates the Seventh Amendment. It does. The SEC's antifraud provisions replicate common law fraud, and it is well established that common law claims must be heard by a jury. . . .

[T]he "public rights" exception to Article III . . . does not apply here because the present action does not fall within any of the distinctive areas . . . [that[may be resolved outside of an Article III court, without a jury. . . .

A

We first explain why this action implicates the Seventh Amendment.

1

The right to trial by jury is "of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right" has always been and "should be scrutinized with the utmost care." . . . Commentators recognized the right as "the glory of the English law." . . . [I]t was prized by the American colonists. When the English began evading American juries by siphoning adjudications to juryless admiralty, vice admiralty, and chancery courts, Americans condemned Parliament. . . . [W]hen the English continued to try Americans

without juries, the Founders cited the practice as a justification for severing our ties to England. See Declaration of Independence ¶20 . . . .

In the Revolution's aftermath, perhaps the "most success[ful]" critique leveled against the proposed Constitution was its "want of a ... provision for the trial by jury in civil cases." . . . The Framers promptly adopted the Seventh Amendment to fix that flaw. In so doing, they "embedded" the right in the Constitution, securing it "against the passing demands of expediency or convenience." . . .

2

[T]he Seventh Amendment guarantees that in "[s]uits at common law, ... the right of trial by jury shall be preserved." . . . [T]he right is not limited to the "common-law forms of action recognized" when the Seventh Amendment was ratified. *Curtis v. Loether*, 415 U.S. 189, 193 (1974). . . . [T]he Framers used the term "common law" in the Amendment "in contradistinction to equity, and admiralty, and maritime jurisprudence." . . . The Amendment therefore "embrace[s] all suits which are not of equity or admiralty jurisdiction." . . .

The Seventh Amendment extends to a particular statutory claim if the claim is "legal in nature." . . . As we made clear in *Tull* [*v. United States*, 481 U.S. 412 (1987)], whether that claim is statutory is immaterial to this analysis. . . . In that case, the Government sued a real estate developer for civil penalties in federal court . . . under the Clean Water Act. . . . [T]he statutory nature of the claim was not legally relevant. "Actions by the Government to recover civil penalties under statutory provisions," we explained, "historically ha[d] been viewed as [a] type of action in debt requiring trial by jury." . . . To determine whether a suit is legal in nature, we directed courts to consider the cause of action and the remedy it provides. Since some causes of action sound in both law and equity, we concluded that the remedy was the "more important" consideration. . . .

In this case, the remedy is all but dispositive. For respondents' alleged fraud, the SEC seeks civil penalties, a form of monetary relief. While monetary relief can be legal or equitable, money damages are the prototypical common law remedy. . . . What determines whether a monetary remedy is legal is if it is designed to punish or deter the wrongdoer, or . . . solely to "restore the status quo." . . . [W]hile courts of equity could order a defendant to return unjustly obtained funds, only courts of law issued monetary penalties to "punish culpable individuals." . . . Applying these principles, we have recognized that "civil penalt[ies are] a type of remedy at common law that could only be enforced in courts of law." . . .

[T]he Securities Exchange Act and the Investment Advisers Act condition the availability of civil penalties on six statutory factors: (1) whether the alleged misconduct involved fraud, . . . (2) whether it caused harm, (3) whether it resulted in unjust enrichment, . . . (4) whether the defendant had previously violated securities laws or regulations . . . , (5) the need for deterrence, and (6) other "matters as justice may require." . . . Of these, several concern culpability, deterrence, and recidivism. Because they tie the availability of civil penalties to the perceived need to punish the defendant rather than to restore the victim, such considerations are legal rather than equitable.

The same is true of the criteria that determine the size of the available remedy. The [statutes] establish three "tiers" of civil penalties. . . . Violating a federal securities law or regulation exposes a defendant to a first tier penalty. A second tier penalty may be ordered if the violation involved fraud. . . . [I]f those acts also resulted in substantial gains to the defendant or losses to another, . . . the defendant is subject to a third tier penalty. . . .

Like the considerations that determine the availability of civil penalties in the first place, the criteria that divide these tiers are also legal in nature. Each tier conditions the available penalty on the culpability of the defendant and the need for deterrence, not the size of the harm that must be remedied. . . . [T]hese factors show that these civil penalties are designed to be punitive.

The final proof that this remedy is punitive is that the SEC is not obligated to return any money to victims. . . . Although the SEC can choose to compensate injured shareholders from the civil penalties it collects, . . . it is not required to do so. . . . Such a penalty by definition does not "restore the status quo" and can make no pretense of being equitable. . . .

In sum, the civil penalties in this case are designed to punish and deter, not to compensate. They are therefore "a type of remedy at common law that could only be enforced in courts of law." . . . That conclusion effectively decides that this suit implicates the Seventh Amendment right, and that a defendant would be entitled to a jury on these claims. . . .

The close relationship between the causes of action in this case and common law fraud confirms that conclusion. Both target the same basic conduct: misrepresenting or concealing material facts. . . . Congress deliberately used "fraud" and other common law terms of art in the Securities Act, the Securities Exchange Act, and the Investment Advisers Act. . . . Congress's decision to draw upon common law fraud created an enduring link between federal securities fraud and its common law "ancestor." . . . "[W]hen Congress transplants a common-law term, the old soil comes with it." . . .

That is not to say that federal securities fraud and common law fraud are identical. In some respects, federal securities fraud is narrower. . . . [F]ederal securities law does not "convert every common-law fraud that happens to involve securities into a violation. . . . In other respects, federal securities fraud is broader. For example, . . . [c]ourts have . . . not typically interpreted federal securities fraud to require a showing of harm. . . . Nevertheless, the close relationship between federal securities fraud and common law fraud confirms that this action is "legal in nature." . . .

B

1

Although the claims at issue here implicate the Seventh Amendment, the Government and the dissent argue that a jury trial is not required because the "public rights" exception applies. Under this exception, Congress may assign the matter for decision to an agency without a jury, consistent with the Seventh Amendment. But this case does not fall within the exception, so Congress may not avoid a jury trial by preventing the case from being heard before an Article III tribunal.

The Constitution prohibits Congress from "withdraw[ing] from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law." *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 18 How. 272, 284 (1856). Once such a suit "is brought within the bounds of federal jurisdiction," an Article III court must decide it, with a jury if the Seventh Amendment applies. *Stern v. Marshall*, 564 U.S. 462, 484 (2011). These propositions are critical to maintaining the proper role of the Judiciary in the Constitution: . . . [T]he judicial Power of the United States . . . cannot be shared with the other branches. . . . [A]s Alexander Hamilton wrote in The Federalist Papers, " 'there is no liberty if the power of judging be not separated from the legislative and executive powers.' " . . .

On that basis, we have repeatedly explained that matters concerning private rights may not be

removed from Article III courts. . . . A hallmark that we have looked to in determining if a suit concerns private rights is whether it "is made of 'the stuff of the traditional actions at common law tried by the courts at Westminster in 1789.' " . . . If a suit is in the nature of an action at common law, then the matter presumptively concerns private rights, and adjudication by an Article III court is mandatory. . . .

At the same time, our precedent has also recognized a class of cases concerning what we have called "public rights." Such matters "historically could have been determined exclusively by [the executive and legislative] branches," . . . even when they were "presented in such form that the judicial power [wa]s capable of acting on them," *Murray's Lessee*, 18 How. at 284. In contrast to common law claims, no involvement by an Article III court in the initial adjudication is necessary in such a case.

The decision that first recognized the public rights exception was *Murray's Lessee*. In that case, a federal customs collector failed to deliver public funds to the Treasury, so the Government issued a "warrant of distress" to compel him to produce the withheld sum. . . . Pursuant to the warrant, the Government eventually seized and sold a plot of the collector's land. . . . Plaintiffs later . . . argu[ed] that the . . . seizure was void because the Government had audited the collector's account and issued the warrant itself without judicial involvement. . . .

The Court upheld the sale. It explained that pursuant to its power to collect revenue, the Government could rely on "summary proceedings" to compel its officers to "pay such balances of the public money" into the Treasury "as may be in their hands." . . . [T]here was an unbroken tradition—long predating the founding—of using these kinds of proceedings to "enforce payment of balances due from receivers of the revenue." . . . In light of this historical practice, the Government could issue a valid warrant without intruding on the domain of the Judiciary. . . .

This principle extends beyond cases involving the collection of revenue. In *Oceanic Steam Navigation Co. v. Stranahan*, 214 U.S. 320 (1909), we considered the imposition of a monetary penalty on a steamship company. Pursuant to its plenary power over immigration, Congress had excluded immigration by aliens afflicted with "loathsome or dangerous contagious diseases," and it authorized customs collectors to enforce the prohibition with fines. . . . When a steamship company challenged the penalty under Article III, we upheld it. Congress's power over foreign commerce, we explained, was so total that no party had a " 'vested right' " to import anything into the country. . . . By the same token, Congress could also prohibit immigration by certain classes of persons and enforce those prohibitions with administrative penalties assessed without a jury. . . .[1]

In *Ex parte Bakelite Corp.*, we upheld a law authorizing the President to impose tariffs on goods imported by "unfair methods of competition." . . . The law permitted him to set whatever tariff was necessary, subject to a statutory cap, to produce fair competition. . . . Because the political branches had traditionally held exclusive power over this field and had exercised it, we explained that the assessment of tariffs did not implicate Article III. . . .

This Court has since held that certain other historic categories of adjudications fall within the exception, including relations with Indian tribes, see *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 174 (2011), the administration of public lands, *Crowell v. Benson*, 285 U.S. 22, 51

[1] The dissent asserts that *Oceanic Steam Navigation* stands for the proposition that the public rights exception applies to any exercise of power granted to Congress. . . . It must be reading from a different case than we are. *Oceanic Steam Navigation* expressly confines its analysis to the exercise of Congress's power over foreign commerce. . . . Nowhere does *Oceanic Steam Navigation* say that the public rights exception applies to cases concerning the securities markets or interstate commerce more broadly. . . .

(1932), and the granting of public benefits such as payments to veterans, *ibid*., pensions, *ibid*., and patent rights, *United States v. Duell*, 172 U.S. 576, 582–583 (1899).

Our opinions governing the public rights exception have not always spoken in precise terms. This is an "area of frequently arcane distinctions and confusing precedents." *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 583 (1985) . . . . The Court "has not 'definitively explained' the distinction between public and private rights," and we do not claim to do so today. *Oil States Energy Services, LLC v. Greene's Energy Group, LLC*, 584 U.S. 325, 334 (2018).

Nevertheless, since *Murray's Lessee*, this Court has typically evaluated the legal basis for the assertion of the doctrine with care. The public rights exception is, after all, an *exception*. It has no textual basis in the Constitution and must therefore derive instead from background legal principles. *Murray's Lessee* itself, for example, took pains to justify the application of the exception in that particular instance by explaining that it flowed from centuries-old rules concerning revenue collection by a sovereign. . . . Without such close attention to the basis for each asserted application of the doctrine, the exception would swallow the rule.[2]

From the beginning we have emphasized one point: "To avoid misconstruction upon so grave a subject, we think it proper to state that we do not consider congress can ... withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty." *Murray's Lessee*, 18 How. at 284. We have never embraced the proposition that "practical" considerations alone can justify extending the scope of the public rights exception to such matters. . . . "[E]ven with respect to matters that arguably fall within the scope of the 'public rights' doctrine, the presumption is in favor of Article III courts." . . . And for good reason: "Article III could neither serve its purpose in the system of checks and balances nor preserve the integrity of judicial decisionmaking if the other branches of the Federal Government could confer the Government's 'judicial Power' on entities outside Article III." . . .

2

This is not the first time we have considered whether the Seventh Amendment guarantees the right to a jury trial "in the face of Congress' decision to allow a non-Article III tribunal to adjudicate" a statutory "fraud claim." . . . We did so in *Granfinanciera* . . . .

Granfinanciera involved a statutory action for fraudulent conveyance. As codified in the Bankruptcy Code, the claim permitted a trustee to void a transfer or obligation made by the

---

[2] The dissent would brush away these careful distinctions and unfurl a new rule: that whenever Congress passes a statute "entitl[ing] the Government to civil penalties," the defendant's right to a jury and a neutral Article III adjudicator disappears. . . . It bases this rule not in the constitutional text (where it would find no foothold), nor in the ratification history (where again it would find no support), nor in a careful, category-by-category analysis of underlying legal principles of the sort performed by *Murray's Lessee* (which it does not attempt), nor even in a case-specific functional analysis (also not attempted). Instead, the dissent extrapolates from the outcomes in cases concerning unrelated applications of the public rights exception and from one opinion, *Atlas Roofing Co. v. Occupational Safety and Health Review Comm'n*, 430 U.S. 442 (1977). The result is to blur the distinctions our cases have drawn in favor of the legally unsound principle that just because the Government may extract civil penalties in administrative tribunals in some contexts, it must always be able to do so in all contexts.

The dissent also appeals to practice, ignoring that the statute Jarkesy and Patriot28 have been prosecuted under is barely over a decade old. It is also unclear how practice could transmute a private right into a public one, or how the absence of legal challenges brought by one generation could waive the individual rights of the next. Practice may be probative when it reflects the settled institutional understandings of the branches. That case is far weaker when the rights of individuals are directly at stake.

debtor before bankruptcy if the debtor "received less than a reasonably equivalent value in exchange . . . ." . . . Actions for fraudulent conveyance were well known at common law. . . . In 1984, however, Congress designated fraudulent conveyance actions "core [bankruptcy] proceedings" and authorized non-Article III bankruptcy judges to hear them without juries. . . .

The issue in *Granfinanciera* was whether this designation was permissible under the public rights exception. . . . We explained that it was not. Although Congress had assigned fraudulent conveyance claims to bankruptcy courts, that assignment was not dispositive. . . . What mattered, we explained, was the substance of the suit. "[T]raditional legal claims" must be decided by courts, "whether they originate in a newly fashioned regulatory scheme or possess a long line of common-law forebears." . . . To determine whether the claim implicated the Seventh Amendment, the Court applied the principles distilled in *Tull*. We examined whether the matter was "from [its] nature subject to 'a suit at common law.' " . . . . A survey of English cases showed that "actions to recover ... fraudulent transfers were often brought at law in late 18th-century England." . . . The remedy the trustee sought was also one "traditionally provided by law courts." . . . Fraudulent conveyance actions were thus "quintessentially suits at common law." . . .

We also considered whether these actions were "closely intertwined" with the bankruptcy regime. . . . Some bankruptcy claims, such as "creditors' hierarchically ordered claims to a pro rata share of the bankruptcy res," . . . are highly interdependent and require coordination. Resolving such claims fairly is only possible if they are all submitted at once to a single adjudicator. Otherwise, parties with lower priority claims can rush to the courthouse to seek payment before higher priority claims exhaust the estate, and an orderly disposition of a bankruptcy is impossible. Other claims, though, can be brought in standalone suits, because they are neither prioritized nor subordinated to related claims. Since fraudulent conveyance actions fall into that latter category, we concluded that these actions were not "closely intertwined" with the bankruptcy process. . . .

We accordingly concluded that fraudulent conveyance actions were akin to "suits at common law" and were not inseparable from the bankruptcy process. . . . The public rights exception therefore did not apply, and a jury was required.

3

Granfinanciera effectively decides this case. Even when an action "originate[s] in a newly fashioned regulatory scheme," what matters is the substance of the action, not where Congress has assigned it. . . . And in this case, the substance points in only one direction.

. . . [T]hese are actions under the "antifraud provisions of the federal securities laws" for "fraudulent conduct." . . . They provide civil penalties, a punitive remedy that we have recognized "could only be enforced in courts of law." *Tull*, 481 U.S. at 422. And they target the same basic conduct as common law fraud, employ the same terms of art, and operate pursuant to similar legal principles. . . . In short, this action involves a "matter[ ] of private rather than public right." *Granfinanciera*, 492 U.S. at 56. Therefore, "Congress may not 'withdraw' " it " 'from judicial cognizance.' " *Stern*, 564 U.S. at 484 (quoting *Murray's Lessee*, 18 How. at 284).

4

Notwithstanding *Granfinanciera*, the SEC contends the public rights exception still applies in this case because Congress created "new statutory obligations, impose[d] civil penalties for their violation, and then commit[ted] to an administrative agency the function of deciding whether a

violation ha[d] in fact occurred." . . . *Granfinanciera* already does away with much of the SEC's argument. Congress cannot "conjure away the Seventh Amendment by mandating that traditional legal claims be ... taken to an administrative tribunal." 492 U.S. at 52. Nor does the fact that the SEC action "originate[d] in a newly fashioned regulatory scheme" permit Congress to siphon this action away from an Article III court. *Ibid.* The constructive fraud claim in *Granfinanciera* was also statutory, . . . but we nevertheless explained that the public rights exception did not apply. Again, if the action resembles a traditional legal claim, its statutory origins are not dispositive. See *id*., at 52, 56.

The SEC's sole remaining basis for distinguishing *Granfinanciera* is that the Government is the party prosecuting this action. . . . But we have never held that "the presence of the United States as a proper party to the proceeding is ... sufficient" by itself to trigger the exception. . . . Again, what matters is the substance of the suit, not where it is brought, who brings it, or how it is labeled. . . . The object of this SEC action is to regulate transactions between private individuals interacting in a pre-existing market. To do so, the Government has created claims whose causes of action are modeled on common law fraud and that provide a type of remedy available only in law courts. This is a common law suit in all but name. And such suits typically must be adjudicated in Article III courts.

5

The principal case on which the SEC and the dissent rely is *Atlas Roofing Co. v. Occupational Safety and Health Review Commission*, 430 U.S. 442 (1977). Because the public rights exception as construed in *Atlas Roofing* does not extend to these civil penalty suits for fraud, that case does not control. . . .

The litigation in *Atlas Roofing* arose under the Occupational Safety and Health Act of 1970 (OSH Act), a federal regulatory regime created to promote safe working conditions. . . . The Act authorized the Secretary of Labor to promulgate safety regulations, and it empowered the Occupational Safety and Health Review Commission (OSHRC) to adjudicate alleged violations. . . . If a party violated the regulations, the agency could impose civil penalties. . . .

Unlike the claims in *Granfinanciera* and this action, the OSH Act did not borrow its cause of action from the common law. Rather, it simply commanded that "[e]ach employer ... shall comply with occupational safety and health standards promulgated under this chapter." . . . These standards bring no common law soil with them. . . . Rather than reiterate common law terms of art, they instead resembled a detailed building code. . . . The purpose of this regime was not to enable the Federal Government to bring or adjudicate claims that traced their ancestry to the common law. Rather, Congress stated that it intended the agency to "develop[ ] innovative methods, techniques, and approaches for dealing with occupational safety and health problems." . . .

Facing enforcement actions, two employers alleged that the adjudicatory authority of the OSHRC violated the Seventh Amendment. . . . The Court rejected the challenge, concluding that "when Congress creates new statutory 'public rights,' it may assign their adjudication to an administrative agency with which a jury trial would be incompatible, without violating the Seventh Amendment[ ]." . . . As the Court explained, the case involved "a new cause of action, and remedies therefor, unknown to the common law." . . . The Seventh Amendment, the Court concluded, was accordingly "no bar to ... enforcement outside the regular courts of law." . . .

The cases that *Atlas Roofing* relied upon did not extend the public rights exception to "traditional legal claims." . . . Instead, they applied the exception to actions that were " 'not ...

suit[s] at common law or in the nature of such ... suit[s].' " . . . Indeed, the Court recognized that if a case did involve a common law action or its equivalent, a jury was required. See 430 U.S. at 455 (" '[W]here the action involves rights and remedies recognized at common law, it must preserve to parties their right to a jury trial.' " . . .

Atlas Roofing concluded that Congress could assign the OSH Act adjudications to an agency because the claims were "unknown to the common law." . . . The case therefore does not control here, where the statutory claim is " 'in the nature of ' " a common law suit. . . .

The reasoning of *Atlas Roofing* cannot support any broader rule. The dissent chants "*Atlas Roofing*" like a mantra, but no matter how many times it repeats those words, it cannot give *Atlas Roofing* substance that it lacks.[4] Even as *Atlas Roofing* invoked the public rights exception, the definition it offered of the exception was circular. The exception applied, the Court said, "in cases in which 'public rights' are being litigated—*e. g.*, cases in which the Government sues in its sovereign capacity to enforce public rights created by statutes." . . .

After *Atlas Roofing*, this Court clarified in *Tull* that the Seventh Amendment does apply to novel statutory regimes, so long as the claims are akin to common law claims. . . . In addition, we have explained that the public rights exception does not apply automatically whenever Congress assigns a matter to an agency for adjudication. See *Granfinanciera*, 492 U.S. at 52.

For its part, the dissent also seems to suggest that *Atlas Roofing* establishes that the public rights exception applies whenever a statute increases governmental efficiency. . . . Again, our precedents foreclose this argument. As *Stern* explained, effects like increasing efficiency and reducing public costs are not enough to trigger the exception. . . .

The novel claims in *Atlas Roofing* had never been brought in an Article III court. By contrast, law courts have dealt with fraud actions since before the founding, and Congress had authorized the SEC to bring such actions in Article III courts and still authorizes the SEC to do so today. . . . Given the judiciary's long history of handling fraud claims, it cannot be argued that the

---

[4] Reading the dissent, one might also think that *Atlas Roofing* is among this Court's most celebrated cases. As the concurrence shows, *Atlas Roofing* represents a departure from our legal traditions. . . .

This view is also reflected in the scholarship. Commentators writing comprehensively on Article III and agency adjudication have often simply ignored the case. See, *e.g.*, R. Fallon, Of Legis/lative Courts, Administrative Agencies, and Article III, 101 Harv. L. Rev. 915 (1988) (no citation to *Atlas Roofing*); J. Harrison, Public Rights, Private Privileges, and Article III, 54 Ga. L. Rev. 143 (2019) (same); W. Baude, Adjudication Outside Article III, 133 Harv. L. Rev. 1511 (2020) (same).

Others who have considered it have offered nothing but a variety of criticisms. See, *e.g.*, R. Kirst, Administrative Penalties and the Civil Jury: The Supreme Court's Assault on the Seventh Amendment, 126 U. Pa. L. Rev. 1281, 1294 (1978) (through its "careless use of precedent," *Atlas Roofing* did "not recognize or [mis]understood" "careful distinctions developed by ... earlier judges"); G. Young, Federal Courts & Federal Rights, 45 Brooklyn L. Rev. 1145, 1153 (1979) ("The *Atlas* Court ... failed to offer an adequate justification for its interpretation of the seventh amendment, either in terms of precedent or the language and history of the amendment."); M. Redish & D. La Fave, Seventh Amendment Right to Jury Trial in Non-Article III Proceedings: A Study in Dysfunctional Constitutional Theory, 4 Wm. & Mary Bill of Right J. 407, 436 (1995) (criticizing *Atlas Roofing* for failing to "provid[e] a principled basis upon which to determine the proper scope of congressional power to remove the civil jury from federal adjudications"); V. Amar, Implementing an Historical Version of the Jury in an Age of Administrative Factfinding and Sentencing Guidelines, 47 S. Tex. L. Rev. 291, 298 (2005) (questioning *Atlas Roofing* for "invert[ing] and turn[ing] on its head the *Apprendi* doctrine's central insight that juries are most important to check the power of the state" (emphasis deleted)); C. Nelson, Adjudication in the Political Branches, 107 Colum. L. Rev. 559, 604–605, and n. 189 (2007) (describing *Atlas Roofing* as "misus[ing]" precedent to "deny the novelty of its holding" and "drive a wedge" into the traditional understanding of the public-private rights distinction). We express no opinion on these various criticisms.

courts lack the capacity needed to adjudicate such actions.

In short, *Atlas Roofing* does not conflict with our conclusion. When a matter "from its nature, is the subject of a suit at the common law," Congress may not "withdraw [it] from judicial cognizance." *Murray's Lessee*, 18 How. at 284.

* * *

A defendant facing a fraud suit has the right to be tried by a jury of his peers before a neutral adjudicator. Rather than recognize that right, the dissent would permit Congress to concentrate the roles of prosecutor, judge, and jury in the hands of the Executive Branch. That is the very opposite of the separation of powers that the Constitution demands. . . .

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

JUSTICE GORSUCH, with whom JUSTICE THOMAS joins, concurring.

. . . The Seventh Amendment's jury-trial right does not work alone. It operates together with Article III and the Due Process Clause of the Fifth Amendment to limit how the government may go about depriving an individual of life, liberty, or property. The Seventh Amendment guarantees the right to trial by jury. Article III entitles individuals to an independent judge who will preside over that trial. And due process promises any trial will be held in accord with time-honored principles. Taken together, all three provisions vindicate the Constitution's promise of a "fair trial in a fair tribunal." . . .

I

. . . [Justice Gorsuch noted that because the SEC brought the action against Jarkesy administratively rather than in court, the case would not be presided over by an independent, Article III judge, with a jury finding the facts, but by an ALJ who would determine both the facts and the law. Because ALJs work for the agency that has decided to bring the charges and enjoy only limited protection against removal, it is difficult for an ALJ "to convey the image of being an impartial fact finder." Justice Gorsuch cited a study showing that the SEC won 90% of its administrative cases, but only 69% of its court cases. Also, because the proceeding was administrative, Jarkesy "lost many of the procedural protections our courts supply in cases where a person's life, liberty, or property is at stake." He was entitled to less discovery than in a court proceeding, and the SEC's evidentiary rules allowed the introduction of hearsay evidence.]

II

. . . If administrative proceedings like Mr. Jarkesy's seem a thoroughly modern development, the British government and its agents engaged in a strikingly similar strategy in colonial America. Colonial administrators routinely steered enforcement actions out of local courts and into vice-admiralty tribunals where they thought they would win more often. These tribunals lacked juries. They lacked truly independent judges. And the procedures materially differed from those available in everyday common-law courts.

[Justice Gorsuch reviewed the history of the vice-admiralty courts in America during the colonial period. Such courts tried cases without juries and Parliament expanded their jurisdiction to include many matters that would have required jury trial in England. Their judges served at the pleasure of the royal administration, unlike judges in England, who generally enjoyed tenure

during good behavior. Abuse of these courts "featured prominently in the calls for revolution."]

[After the Revolution,] the American people went to great lengths to prevent a backslide toward anything like the vice-admiralty courts. . . . Article III . . . provided that "[t]he judicial Power" . . . would lie with life-tenured, salary-protected judges. . . .

[Responding to the concern that Article III did not provide for juries in civil cases,] the Seventh Amendment promised the right to a jury trial in " '[s]uits at common law.' " . . . [T]his did not mean only those "suits, which the common law recognized among its old and settled proceedings," . . . The founding generation anticipated the possibility Congress would introduce new causes of action and perhaps new remedies, too. . . . [T]his Court has long understood the Seventh Amendment's protections to apply in "all [civil] suits which are not of equity [or] admiralty jurisdiction." . . .

The Fifth Amendment's Due Process Clause addressed remaining concerns about the processes that would attend trials before independent judges and juries. It provided that the government may not deprive anyone of "life, liberty, or property, without due process of law." As originally understood, this provision prohibited the government from "depriv[ing] a person of those rights without affording him the benefit of (at least) those customary procedures to which freemen were entitled by the old law of England." . . .

C

These three constitutional provisions were meant to work together, and together they make quick work of this case. In fact, each provision requires the result the Court reaches today.

First, because the " 'matter' " before us is one "which, from its nature, is the subject of a suit at the common law," . . . "the responsibility for deciding [it] rests with Article III judges in Article III courts." . . . Nor does it make a difference whether we think of the SEC's action here as a civil-penalties suit or something akin to a traditional fraud claim: At the founding, both kinds of actions were tried in common-law courts. . . . [T]he SEC's in-house civil-penalty scheme violates Article III by "withdraw[ing]" the matter "from judicial cognizance" and handing it over to the Executive Branch for an in-house trial. . . .

Second, because the action the SEC seeks to pursue is not the stuff of equity or admiralty jurisdiction but the sort of suit historically adjudicated before common-law courts, the Seventh Amendment guarantees Mr. Jarkesy the right to have his case decided by a jury. . . . [I]t is irrelevant that the SEC derived its power to sue under a "new statut[e]" or that the agency proceeded under "a new cause of action." . . . [T]he government cannot evade the Seventh Amendment so easily. . . .

Third, were there any doubt, the Due Process Clause confirms these conclusions. . . . Because the penalty the SEC seeks would "depriv[e]" Mr. Jarkesy of "property," Amdt. 5, due process demands nothing less than "the process and proceedings of the common law." . . . That means the regular course of trial proceedings with their usual protections, . . . not the use of ad hoc adjudication procedures before the same agency responsible for prosecuting the law, subject only to hands-off judicial review. . . .

III

A

The government resists these conclusions. As the government sees it, this case implicates the so-called public rights exception. . . . In the government's view, the public rights exception "*at a*

minimum allows Congress to create new statutory obligations, impose civil penalties for their violation, and then commit to an administrative agency the function of deciding whether a violation has in fact occurred." . . .

The Court rightly rejects these arguments. . . . [U]nder the public rights exception, Congress may allow the Executive Branch to resolve certain matters free from judicial involvement in the first instance. . . . But, despite its misleading name, the exception does not refer to *all* matters brought by the government against an individual to remedy public harms, or even all those that spring from a statute. . . . [P]ublic rights are a narrow class defined and limited by history. As the Court explains, that class has traditionally included the collection of revenue, customs enforcement, immigration, and the grant of public benefits. . . .

[P]ublic rights have at least one feature in common: a serious and unbroken historical pedigree. . . . We have upheld summary procedures for customs collection, for example, because they were consistent with both "the common and statute law of England prior to the emigration of our ancestors" and "the laws of many of the States at the time of the adoption of" the Constitution. . . . But when it comes to the kind of civil-penalty suit before us, that same history points in the opposite direction, suggesting actions of this sort belong before an independent judge, a jury, and decided in a trial that accords with traditional judicial procedures. . . .

B

If all that's so, why might the government feel comfortable invoking the public rights exception? To be fair, much of it may have to do with this Court. Some of our past decisions have allowed the government to chip away at the courts' historically exclusive role in adjudicating private rights—and juries' accompanying role in that adjudication. . . .

[Justice Gorsuch reviewed prior Supreme Court decisions. He criticized *Crowell v. Benson*, 285 U.S. 22 (1932), which approved administrative resolution, subject to limited judicial review, of maritime workers' claims under federal law for compensation for work-related injuries. He said that the case involved "a dash of fiction and a pinch of surmise" in determining that because federal courts sometimes appointed special masters and commissioners, and often chose to accept their findings, Congress could *require* courts to accept findings by the Executive Branch. Subsequent cases extended *Crowell*'s holding outside the admiralty context and required courts to accept, subject to limited judicial review, findings by other executive agencies.]

The high-water mark of the movement toward agency adjudication may have come in 1977 in *Atlas Roofing* . . . . Some have read that decision to suggest the category of public rights might encompass pretty much any case arising under any " 'new statutory obligations,' " . . . But without reference to any constitutional text or history to guide what does or does not qualify as a public right, that view has (unsurprisingly) proven wholly unworkable.

It did not take long for this Court to realize as much. Just 12 years later, in *Granfinanciera,* . . . this Court cabined *Atlas Roofing* so narrowly that the author of *Atlas Roofing* complained that the Court had "overrul[ed]" it. . . .

Yet, even after the Court moved away from *Atlas Roofing*, our public rights jurisprudence remained muddled. Since then, the Court has suggested that public rights might include those "involving statutory rights that are integral parts of a public regulatory scheme." *Granfinanciera*, 492 U.S. at 55, n.10. We have . . . tried our hand at a five-factor balancing test. See *Stern*, 564 U.S. at 491 (describing *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833 (1986)). . . . [T]hese factors have included the consideration of "the concerns that drove Congress to depart from the requirements of Article III." . . .

Today, the Court does much to return us to a more traditional understanding of public rights. Adhering to *Granfinanciera*, the Court rejects the government's overbroad reading of *Atlas Roofing* and recognizes that the kind of atextual and ahistorical (not to mention confusing) tests it inspired do little more than ask policy questions the Constitution settled long ago. Yes, a limited category of public rights were originally and even long before understood to be susceptible to resolution without a court, jury, or the other usual protections an Article III court affords. But outside of those limited areas, we have no license to deprive the American people of their constitutional right to an independent judge, to a jury of their peers, or to the procedural protections at trial that due process normally demands. Let alone do so whenever the government wishes to dispense with them. . . .

C

The dissent's competing account of public rights is astonishing. On its telling, the Constitution might impose some (undescribed) limits on the power of the government to send cases "involving the liability of one individual to another" to executive tribunals for resolution. . . . But, thanks to public rights doctrine, the dissent insists, the Constitution imposes *no* limits on the government's power to seek civil penalties "outside the regular courts of law where there are no juries." . . . But where in Article III, the Seventh Amendment, and due process can the dissent find this new rule? What about founding-era practice or original meaning? And why would a Constitution drawn up to protect against arbitrary government action make it easier for the government than for private parties to escape its dictates? The dissent offers no answers.

To be sure, the dissent tries to appeal to precedent. It even asserts that our decisions support, "*without exception*," its sweeping conception of public rights doctrine. . . . But the dissent's approach to our precedents is like a picky child at the dinner table. It selects only a small handful while leaving much else untouched. . . . [Justice Gorsuch argued that the dissent relied on the results of *Murray's Lessee* and *Oceanic Steam Nav. Co. v. Stranahan* while ignoring the Court's discussion in those cases of the long history of executive resolution of claims by the government against collectors of public revenue and Congress's long-recognized and extensive authority over the field of immigration.]

Really, one has to wonder: If the public rights exception is as broad and unqualified as the dissent asserts, why did our predecessors bother to discuss history or Congress's peculiar powers when it comes to revenue and immigration? Why didn't the Court simply announce the rule the dissent would have us announce today: that our Constitution does not stand in the way of "agency adjudications of statutory claims ... brought by the Government in its sovereign capacity"? . . . The answer, of course, is that the Constitution has never countenanced the dissent's notion that the Executive is free to reassign virtually any civil case in which it is a party to its own tribunals where its own employees decide cases and inconvenient juries and traditional trial procedures go by the boards. . . .

Failing all else, the dissent retreats to *Atlas Roofing*. At least that decision, it insists, supports its nearly boundless conception of public rights. . . . Construed as broadly as the dissent proposes, *Atlas Roofing*'s view of public rights stands as an outlier in our jurisprudence—with no apparent support in original meaning, at odds with prior precedent, and inconsistent with later precedent as well. . . . [T]he Court's alternative construction of *Altas Roofing* fits far more comfortably with all those legal sources. . . . [I]t is of a piece with our usual practice of construing "loose language" found in a prior judicial opinion in a way that better conforms it to the mainstream of our precedents. . . .

*

People like Mr. Jarkesy may be unpopular. Perhaps even rightly so. . . . But that should not obscure what is at stake in his case or others like it. While incursions on old rights may begin in cases against the unpopular, they rarely end there. . . . That is why the Constitution built "high walls and clear distinctions" to safeguard individual liberty. . . . Ones that ensure even the least popular among us has an independent judge and a jury of his peers resolve his case under procedures designed to ensure a fair trial in a fair forum. . . . [T]he Court hardly leaves the SEC without ample powers and recourse. The agency is free to pursue all of its charges against Mr. Jarkesy. And it is free to pursue them exactly as it had always done until 2010: In a court, before a judge, and with a jury. With these observations, I am pleased to concur.

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

Throughout our Nation's history, Congress has authorized agency adjudicators to find violations of statutory obligations and award civil penalties to the Government as an injured sovereign. The Constitution, this Court has said, does not require these civil-penalty claims belonging to the Government to be tried before a jury in federal district court. . . .

Today, for the very first time, this Court holds that Congress violated the Constitution by authorizing a federal agency to adjudicate a statutory right that inheres in the Government in its sovereign capacity, also known as a public right. . . . I respectfully dissent. . . .

II

. . .

A

. . . Although this case involves a Seventh Amendment challenge, the principal question at issue is one rooted in Article III. . . . [T]he Seventh Amendment's jury-trial right "applies" only in "an Article III court." . . . [I]f non-Article III adjudication is permissible, then "the Seventh Amendment poses no independent bar to the adjudication of that action by a nonjury factfinder." *Granfinanciera* . . .

B

For more than a century and a half, this Court has answered that Article III question by pointing to the distinction between "private rights" and "public rights." . . . [P]ublic rights always can be assigned outside of Article III. They " 'do not require judicial determination' " under the Constitution, even if they " 'are susceptible of it.' " . . .

The majority says that aspects of the public-rights doctrine have been confusing. . . . That might be true for cases involving wholly private disputes, but not for cases where the Government is a party. . . . When a claim belongs to the Government as sovereign, the Constitution permits Congress to enact new statutory obligations, prescribe consequences for the breach of those obligations, and then empower federal agencies to adjudicate such violations and impose the appropriate penalty. See *Atlas Roofing*, 430 U.S. at 450–455 (collecting cases).[4] This Court has repeatedly emphasized these unifying principles through an unbroken series of cases over almost 200 years.

1

[4] Judicial review of these agency decisions allows Congress to avoid any due process concerns that might arise from having executive officials deprive someone of their property without review in an Article III court.

[In *Murray's Lessee*,] this Court concluded that the Government's in-house assessment and collection of taxes and penalties based on a federal official's adjudication of the facts did not violate Article III . . . because "public rights" were at issue. . . . In other words, the dispute arose between the Government and the customs collector in connection with the Government's exercise of its constitutional power to collect revenue. . . .

In *Oceanic Steam Nav. Co. v. Stranahan*, 214 U.S. 320 (1909), the Court upheld a customs official's imposition of a penalty on a steamship company that violated immigration laws . . . . The customs official determined the facts, adjudicated the violation, and enforced the statutory prohibition on immigration through the assessment of a monetary penalty. . . . The Court noted the breadth of Congress's immigration power, . . . [but] far from restricting the public-rights doctrine to this particular exercise of congressional power . . . [the] Court went out of its way to explain that civil-penalty claims brought by the Government could be assigned to the Executive for initial adjudication "not only as to tariff, but as to internal revenue, taxation, and other subjects," including the regulation of foreign commerce. . . . Whether or not such legislation violates Article III depends on whether Congress acted pursuant to a "grant of power made by the Constitution," and not on whether it "relate[s] to subjects peculiarly within the authority of the legislative department of the Government." . . . This Court has repeatedly approved Congress's assignment of public rights to agencies in diverse areas of the law, reflecting Congress's varied constitutional powers.[5] A nonexhaustive list includes "interstate and foreign commerce, taxation, immigration, the public lands, public health, the facilities of the post office, pensions, and payments to veterans." . . .

The list could go on and on. That is because, in every case where the Government has acted in its sovereign capacity to enforce a new statutory obligation through the administrative imposition of civil penalties or fines, this Court, without exception, has sustained the statutory scheme authorizing that enforcement outside of Article III.

2

A unanimous Court made this exact point nearly half a century ago in *Atlas Roofing*. . . . That case presented the same question as this one: Whether the Seventh Amendment permits Congress to commit the adjudication of a new cause of action for civil penalties to an administrative agency. . . . The Court said it did.

. . . Congress found "that work-related deaths and injuries had become a 'drastic' national problem," and that existing causes of action, including tort actions for negligence and wrongful death, did not adequately "protect the employee population from death and injury due to unsafe working conditions." . . . Congress enacted the Occupational Safety and Health Act of 1970 (OSHA) to require employers "to avoid maintaining unsafe or unhealthy working conditions." . . . OSHA in turn [empowered] the Occupational Safety and Health Review Commission to impose civil penalties on employers maintaining unsafe working conditions. . . .

This Court upheld OSHA's statutory scheme [against a Seventh Amendment challenge]. It relied on the long history of public-rights cases endorsing Congress's now-settled practice of assigning the Government's rights to civil penalties for violations of a statutory obligation to in-house adjudication in the first instance. . . . [T]he Court concluded that, where Congress

[5] The majority's fixation on this dissent's discussion of *Stranahan* . . . misses the fact that *Stranahan* exists within a long line of cases recognizing the diverse areas of the law comprising the public-rights doctrine.

"create[s] a new cause of action, and remedies therefor, unknown to the common law," it is free to "plac[e] their enforcement in a tribunal supplying speedy and expert resolutions of the issues involved . . .even if the Seventh Amendment would have required a jury where the adjudication of those rights is assigned to a federal court of law." . . . [T]his Court declared [the] " 'settled judicial construction' ... 'from the beginning' " . . . [to be that] "[t]he Government could commit the enforcement of statutes and the imposition and collection of fines ... for administrative enforcement, without judicial trials," even if the same action would have required a jury trial if committed to an Article III court. . . .

C

. . .[T]his case should have been resolved under a faithful and straightforward application of *Atlas Roofing* and a long line of this Court's precedents. . . . The majority instead wishes away *Atlas Roofing* by burying it at the end of its opinion and minimizing the unbroken line of cases on which *Atlas Roofing* relied. . . .

Here, just as in *Atlas Roofing*, Congress identified a problem; concluded that the existing remedies were inadequate; and enacted a new regulatory scheme as a solution. The problem was a lack of transparency and accountability in the securities market that contributed to the Great Depression of the 1930s. . . . The inadequate remedies were the then-existing state statutory and common-law fraud causes of action. The solution was a comprehensive federal scheme of securities regulation consisting of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940. . . .

The prophylactic nature of the statutory regime also is virtually indistinguishable from the OSHA scheme at issue in *Atlas Roofing*. . . . [T]hese securities laws prohibit the misrepresentation or concealment of various material facts through the imposition of federal registration and disclosure requirements. . . . [The three] laws do not require proof of actual reliance on an investor's misrepresentations or that an "investor has actually suffered financial loss." . . . OSHA too prohibits conduct that could, but does not necessarily, injure a private person. . . . The employer's failure to maintain safe and healthy working conditions violates OSHA even if there is no actionable harm to an employee . . . .

Moreover, both here and in *Atlas Roofing*, Congress empowered the Government to institute administrative enforcement proceedings to adjudicate potential violations of federal law and impose civil penalties on a private party for those violations, all while making the final agency decision subject to judicial review. . . .

Ultimately, both cases arise between the Government and others in connection with the performance of the Government's constitutional functions, and involve the Government acting in its sovereign capacity to bring a statutory claim on behalf of the United States in order to vindicate the public interest. They both involve, as *Atlas Roofing* put it, "new cause[s] of action, and remedies therefor, unknown to the common law." . . . Neither Article III nor the Seventh Amendment prohibits Congress from assigning the enforcement of these new "Governmen[t] rights to civil penalties" to non-Article III adjudicators. . . . In a world where precedent means something, this should end the case. . . .

III

The practice of assigning the Government's right to civil penalties for statutory violations to non-Article III adjudication had been so settled that it become an undisputable reality of how "our Government has actually worked." . . . That is why the Court has had no cause to address

this kind of constitutional challenge since its unanimous decision in *Atlas Roofing*. The majority takes a wrecking ball to this settled law and stable government practice. . . .

A

To start, it is almost impossible to discern how the majority defines a public right and whether its view of the doctrine is consistent with this Court's public-rights cases. The majority at times seems to limit the public-rights exception to areas of its own choosing. It points out, for example, that some public-rights cases involved the collection of revenue, customs law, and immigration law, . . . and that Atlas Roofing involved OSHA and not "civil penalty suits for fraud."[6] . . . Other times, the majority highlights a particular practice predating the founding, such as the "unbroken tradition" in *Murray's Lessee* of executive officials issuing warrants of distress to collect revenue. . . . [N]one of these explanations for the doctrine is satisfactory. What is the legal principle behind saying only these areas and no further? . . . How does the requirement of a historical practice dating back to the founding, or "flow[ing] from centuries-old rules," . . . account for the broad universe of public-rights cases in the United States Reporter? The majority does not say.

The majority's only other theory fares no better. The majority seems to suggest that a common thread underlying these cases is that "the political branches had traditionally held exclusive power over th[ese] field[s] and had exercised it." . . . *Atlas Roofing* expressly rejected the argument that the public-rights doctrine is limited to particular exercises of congressional power. The employers in *Atlas Roofing* argued "that [prior] cases . . . deal with . . . sovereign powers that are inherently in the exclusive domain of the Federal Government and critical to its very existence—the power over immigration, the importation of goods, and taxation. . . . [They argued that] those cases [are] inapplicable where the Government exercises other powers that [they] regard[ed] as less fundamental . . . such as the power to regulate commerce among the several States." . . . The Court rejected the employers' argument, explaining that nothing in those cases turned on those particular exercises of the Government's authority. . . .

[E]ven if *Atlas Roofing* had not explicitly rejected the proposed distinction here, the majority cannot reconcile its restrictive view of the public-rights doctrine with *Atlas Roofing* and other precedents. . . . [I]t is unclear how OSHA, or the National Labor Relations Act at issue in *Jones & Laughlin*, would fit the majority's view of the public-rights doctrine, or why the exercise of interstate-commerce power to enact those statutes would be any different from the exercise of that same power to enact the federal-securities laws at issue here. . . .

The majority's description of the doctrine also fails to account for public rights that do not belong to the Federal Government in its sovereign capacity. . . . Conspicuously absent from the majority's discussion are . . . cases in which this Court held that Congress could assign a private federally created action that was "closely integrated into a public regulatory scheme" for adjudication in a non-Article III forum. *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 594 (1985). These cases include, for example, an agency's adjudication of state-law counterclaims to an investor's federal action against its broker, *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 835–836, 847–850 (1986), and the arbitration of data-compensation disputes among participants in the Environmental Protection Agency's pesticide registration scheme, *Thomas*, 473 U.S. at 571, 589–592. . . .

It is not clear what else, if anything, might qualify as a public right, or what is even left of the

[6] The majority also cites cases involving "relations with Indian tribes, the administration of public lands, and the granting of public benefits such as payments to veterans, pensions, and patent rights." . . .

doctrine after today's opinion. Rather than recognize the long-settled principle that a statutory right belonging to the Government in its sovereign capacity falls within the public-rights exception to Article III, the majority opts for a "we know it when we see it" formulation. This Court's precedents and our coequal branches of Government deserve better.

B

Rather than relying on *Atlas Roofing* or the relevant public-rights cases, the majority instead purports to follow *Tull* and *Granfinanciera*. The former involved a suit in federal court and the latter involved a dispute between private parties. . . . [B]oth the majority and the concurrence miss the critical distinction drawn in this Court's precedents between the non-Article III adjudication of public-rights matters involving the liability of one individual to another and those involving claims belonging to the Government in its sovereign capacity. . . .

1

The majority bafflingly proclaims that "the remedy is all but dispositive" in this case . . . ignoring that *Atlas Roofing* and countless precedents before it rejected that proposition. . . . The employers in *Atlas Roofing* argued that the Seventh Amendment prohibited Congress from assigning to an agency the same remedy at issue here: civil penalties. . . . This Court rejected that argument outright, citing a long line of cases involving the Executive's adjudication of statutory claims for civil penalties brought by the Government in its sovereign capacity. . . .

The majority relies almost entirely on *Tull*, which held that statutory claims for civil penalties were "a type of remedy at common law" that entitled a defendant to a jury trial. . . . Critically, however, the *Tull* Court's analysis took place in an entirely different context: federal court. . . . *Tull* did not present the question at issue in *Atlas Roofing* and other cases involving non-Article III adjudication of Government claims in the first instance. Rather, *Tull* stands for the unremarkable proposition that, when the Government sues an entity for civil penalties in federal district court, the Seventh Amendment entitles the defendant "to a jury trial to determine his liability on the legal claims." . . .

That conclusion says nothing about the constitutionality of the SEC's in-house adjudicative scheme. *Atlas Roofing* and its predecessors could not have been clearer on this point: Congress can assign the enforcement of a statutory obligation for in-house adjudication to executive officials, "even if the Seventh Amendment would have required a jury where the adjudication of those rights is assigned to a federal court of law instead of an administrative agency." . . .

2

The majority next argues that the "close relationship" between the federal-securities laws and common-law fraud "confirms that this action is 'legal in nature,' " and entitles respondents to a jury trial. . . . That argument does not fare any better than the argument on remedy. . . . *Granfinanciera*, on which the majority relies to make its cause-of-action argument, set forth the public-rights analysis only for "disputes to which the Federal Government is not a party in its sovereign capacity." . . . For cases that, as here, involve the Government in its sovereign capacity, the *Granfinanciera* Court plainly stated that "Congress may fashion causes of action that are closely *analogous* to common-law claims and [still] place them beyond the ambit of the Seventh Amendment by assigning their resolution to a [non-Article III] forum in which jury trials are unavailable.". . .

Granfinanciera did not involve a statutory right that belonged to the Government in its

sovereign capacity. . . . The majority brushes aside this critical distinction between *Atlas Roofing* and *Granfinanciera*. . . . [T]he majority writes [that] . . . this Court has "never held that the 'presence of the United States as a proper party to the proceeding is ... sufficient' by itself to trigger the exception." . . . [T]he majority attacks a strawman. The SEC does not claim that the mere presence of the United States as a proper party necessarily means that a public right is at issue.[9] . . . Of course "what matters is the substance" of the claim. . . .

[In the securities laws,] Congress did not just repackage a common-law claim under a new label. It created new statutory obligations and an entire federal scheme. . . . Congress created a new right unknown to the common law that, unlike common-law fraud, belongs to the public and inheres in the Government in its sovereign capacity. . . .

For these reasons, "[a]n action brought by an Executive Branch agency to enforce federal securities laws is not the same as an action brought by one individual against another for monetary or injunctive relief of the sort that law courts (with juries) in England or the States have traditionally heard." . . . Congress did not unlawfully "siphon" a traditional legal action "away from an Article III court" when it enacted the federal-securities laws and provided for their enforcement within the SEC. . . .

IV

A faithful and straightforward application of this Court's longstanding precedent should have resolved this case. Faithful "[a]dherence to precedent is 'a foundation stone of the rule of law.' " . . . The majority's decision. . . effects a seismic shift in this Court's jurisprudence. . . .

The majority pulls a rug out from under Congress without even acknowledging that its decision upends over two centuries of settled Government practice. The United States . . . told this Court in [its brief in] *Atlas Roofing* that "during the whole of our history, regulatory fines and penalties have been collected by non-jury procedures pursuant to ... legislative decisions," and that "[i]t would be most remarkable if, at this late date, the Seventh Amendment were construed to outlaw this consistent rule of government followed for two centuries." . . . This Court agreed and upheld that practice. . . .

Congress has enacted countless new statutes in the past 50 years that have empowered federal agencies to impose civil penalties for statutory violations. . . . Similarly, there are . . . more than two dozen agencies that can impose civil penalties in administrative proceedings. . . .

Some agencies . . . can pursue civil penalties in both administrative proceedings and federal court. . . . Others . . . can pursue civil penalties only in agency enforcement proceedings. . . . [A]ll the majority can say is tough luck; get a new statute from Congress. . . .

[T]he constitutionality of hundreds of statutes may now be in peril, and dozens of agencies could be stripped of their power to enforce laws enacted by Congress. . . . The majority claims that its ruling is limited to "civil penalty suits for fraud" pursuant to a statute that is "barely over a decade old." . . . That incredible assertion should fool no one. Today's decision is a massive sea change. . . .

---

[9] Indeed, "the public-rights doctrine does not extend to any criminal matters, although the Government is a proper party." . . . That is so not only because this Court has held as much, but also because Article III itself prescribes that "[t]he trial of all Crimes, except in Cases of Impeachment, shall be by Jury." § 2, cl. 3. [But] Article III . . . says nothing about civil-penalty claims brought by the Government. Beyond criminal trials, the Solicitor General also concedes that, under this Court's precedents, the public-rights doctrine does not apply when the Government brings a common-law claim in a proprietary capacity. . . .

Today's ruling is part of a disconcerting trend: When it comes to the separation of powers, this Court tells the American public and its coordinate branches that it knows best. . . . The Court tells Congress how best to structure agencies, vindicate harms to the public at large, and even provide for the enforcement of rights created for the Government. . . .

There are good reasons for Congress to set up a scheme like the SEC's. It may yield important benefits over jury trials in federal court, such as greater efficiency and expertise, transparency and reasoned decisionmaking, as well as uniformity, predictability, and greater political accountability. . . . Others may believe those benefits are overstated, and that a federal jury is a better check on government overreach. . . . This Court's job is not to decide who wins this debate. These are policy considerations for Congress. . . .

Today's decision is a power grab. Once again, "the majority arrogates Congress's policymaking role to itself." . . . It prescribes artificial constraints on what modern-day adaptable governance must look like. In telling Congress that it cannot entrust certain public-rights matters to the Executive because it must bring them first into the Judiciary's province, the majority oversteps its role and encroaches on Congress's constitutional authority. . . .

I respectfully dissent.

Notes and Questions

1. What is the main change made by this decision? Articulate as clearly as you can what kinds of cases Congress now may not assign to a non-Article III forum for adjudication. Are any prior cases no longer good law?

2. Does this case concern only the Seventh Amendment or does it also offer insight as to when Article III itself requires an Article III court to resolve an adjudicatory matter? Recall what the Supreme Court said in *Granfinanciera* (Casebook p. 260) about the relationship between these two issues. Does this case help resolve the debate between the *Northern Pipeline* "categorical" approach and the *CFTC v. Schor* "balancing" approach to Article III questions?

3. The majority thinks that a key part of the test for whether Congress can assign an adjudicatory matter to an administrative tribunal is whether the action "from its nature, is the subject of a suit at the common law." The majority says that Congress could provide an administrative tribunal for the action at issue in *Atlas Roofing*, in which the government sought civil penalties against the defendant for alleged violation of the Occupational Safety and Health Act (OSHA), because OSHA "did not borrow its cause of action from the common law," but rather required compliance with occupational safety rules that "resembled a detailed building code." By contrast, according to the majority, the cause of action provided by the federal securities laws bears a "close relationship" to common law fraud.

Is this distinction convincing? As Justice Sotomayor's dissent points out, an essential element of a common law action for either occupational injury or securities fraud is a showing that the plaintiff has been harmed. OSHA, by contrast, allowed the government to recover civil penalties for an employer's failure to comply with OSHA safety requirements regardless of whether anyone was harmed as a result. Similarly, the federal securities laws permit the government to recover civil penalties against anyone who fails to make the disclosures the laws require, regardless of whether anyone is thereby harmed. Why is this distinction insufficient to show that the securities laws, like OSHA, create a cause of action that was "unknown to the

common law"? How is a court (or Congress) supposed to determine whether a particular action provided by a federal statute is "from its nature . . . the subject of a suit at the common law"? Could Congress change the cause of action under the securities laws in some way that would make it sufficiently distinct from a common law fraud action that Congress could properly allow the SEC to bring the action in an administrative proceeding?

4. Another key point of contention between the majority and the dissent is what prior cases establish as precedent. The majority relies on *Tull* and *Granfinanciera* and distinguishes *Murray's Lessee*, *Oceanic Steam Navigation*, *Atlas Roofing*, and other cases relied on by the dissent. According to the majority, the latter cases approve Congress's use of non-Article III tribunals only with regard to matters that by longstanding tradition could be determined exclusively by the executive, *Murray's Lessee*, that involve powers of Congress that are "total" and "exclusive," *Oceanic Steam Navigation*, or that involve causes of action "unknown to the common law," *Atlas Roofing*. The dissent, by contrast, distinguishes *Tull* and *Granfinanciera* on the ground that the former case was brought in federal court (where the Seventh Amendment applies) rather than in a non-Article III tribunal, and the latter involved a claim between private parties rather than a claim by the federal government in its sovereign capacity. The dissent reads *Atlas Roofing* and other cases to establish the rule that any suit by the federal government in its sovereign capacity, under a cause of action created by Congress pursuant to any of its constitutional powers, is a matter of "public rights" that Congress may assign to a non-Article III forum for decision.

It is difficult to evaluate these arguments without closely reading all the prior cases involved. But it is worth noting that in *Atlas Roofing* the Court considered the question of whether its prior cases were limited to Congress's exercise of certain constitutional powers only. The Court said that there was "some force" to the argument that prior cases concerned "the exercise of sovereign powers that are inherently in the exclusive domain of the Federal Government and critical to its very existence—the power over immigration, the importation of goods, and taxation." But it also said that "[t]he difficulty with this argument is that the Court in these cases . . . did not appear to confine its holdings in this manner." The Court unanimously concluded that "the settled judicial construction . . . from the beginning [was that] the Government could commit the enforcement of statutes and the imposition and collection of fines to the judiciary, in which event jury trial would be required, . . . [but] the United States could also validly opt for administrative enforcement, without judicial trials." In *Granfinanciera*, the Court said that *Atlas Roofing* "noted that Congress may effectively supplant a common-law cause of action carrying with it a right to a jury trial with a statutory cause of action shorn of a jury trial right if that statutory cause of action inheres in, or lies against, the Federal Government in its sovereign capacity." Do these statements support Justice Sotomayor's view?

On the other hand, as Justice Gorsuch points out, if the correct rule were, as the dissent claims, that Congress may assign to an administrative tribunal any claim brought by the government in its sovereign capacity under any federal law passed pursuant to any power of Congress, why would prior cases not simply say so, instead of discussing the lengthy history of administrative resolution of a particular issue, as in *Murray's Lessee*, or making the point that "over no conceivable subject is the legislative power of Congress more complete than it is over that with which the act we are now considering deals [i.e., immigration]," as in *Oceanic Steam Navigation*? Also, is Justice Gorsuch correct that it is counterintuitive to conclude that the Seventh Amendment provides a more secure right to jury trial in cases between private parties

than in cases by the government against a private party?

5. What does *Jarkesy* imply about the constitutionality of allowing an administrative agency to resolve a monetary dispute between private parties? Recall, for example, that *CFTC v. Schor* (Casebook p. 250) involved claims by an investor, Schor, that Conti, his broker, had violated the Commodities Exchange Act (by, among other things, violating the Act's anti-fraud provision), and a common law counterclaim by Conti that Schor owed Conti money to cover the negative balance in his account. The Court, applying a multi-factor balancing test, held that Congress could authorize the agency to resolve Conti's common law counterclaim (subject to judicial review), and the constitutionality of allowing the agency to resolve Schor's claim under the CEA was apparently so clear that neither party questioned it. Are these points now in doubt?

Updates to Chapter 7

D. Methods of Avoiding State Sovereign Immunity

Add to the end of note 2 on pages 606-607:

In applying this rule, the Court has determined that Congress has abrogated immunity in "only two situations." *Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Centro de Periodismo Investigativo, Inc.*, 143 S. Ct. 1176 (2023). First, when Congress says "in so many words" that it is stripping immunity from a sovereign entity, as, for example, in the Patent Act, which provides that states "shall not be immune [from suits for patent infringement], under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity." 35 U.S.C. § 296(a). Second, "when a [federal] statute creates a cause of action and authorizes suit against a government on that claim," as, for example, the federal Age Discrimination in Employment Act and Family Medical Leave Act do. Although these statutes do not expressly proclaim that they abrogate sovereign immunity, they do expressly authorize suits against states, and "recognizing immunity would have negated those authorizations." *Fin. Oversight & Mgmt. Bd.*, *supra*.

A statute that merely provides that suits against a particular sovereign entity shall be brought in a particular federal court, without specifying *which* suits, is not to be understood as generally abrogating the entity's immunity. Rather, such a statute specifies the proper forum for suits that are allowed against the entity, because, for example, some *other* statute abrogates the entity's immunity, or because the entity itself waives that immunity. *Id*.

However, when a federal statute does expressly abrogate sovereign immunity, it is not always required that the statute expressly name the particular entity whose immunity is abrogated. For example, in *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 143 S. Ct. 1689 (2023), the Supreme Court considered the Bankruptcy Code, which expressly abrogates the immunity of "governmental units," 11 U.S.C. § 106(a), and which provides that the term "governmental unit" means:

> United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.

§ 101(27). The Court held that this statute sufficed to abrogate the immunity of federally recognized Indian tribes, which enjoy a tribal immunity that is similar to state sovereign immunity and that is subject to a similar requirement of "unmistakably clear" abrogation. The Court relied on the breadth of the statutory definition, particularly its concluding catchall phrase, "other foreign or domestic government." The Court observed that "[f]ew phrases in the English language express all-inclusiveness more than the pairing of two extremes." Justice Gorsuch dissented.

The Court reiterated this reasoning in *Department of Agriculture Rural Development Rural Housing Service v. Kirtz*, 601 U.S. 42 (2024), although the case involved a federal rather than a state defendant. The plaintiff sued a federal government agency under the Fair Credit Reporting Act (FCRA). The plaintiff alleged that the agency had falsely reported that the plaintiff was delinquent on a loan he had received from the agency and had failed to correct the error after it was called to the agency's attention, thereby damaging the plaintiff's credit. In an opinion by Justice Gorsuch, the Court unanimously held that the FCRA waived federal sovereign immunity, even though the relevant sections made no express reference to sovereign immunity. The Act, the Court noted, (1) requires any "person" who reports credit information to correct any mistake that is called to the person's attention, (2) defines "person" to include "government agency," and (3) authorizes suit against "any person" who violates the Act's provisions. These provisions, the Court held, clearly indicated that Congress had authorized suit against government agencies. The Court said that Congress need not use any "magic words" to waive sovereign immunity and that the waiver need not be accomplished in a single statutory section.

Updates to Chapter 8

A. Causes of Action

1. Against Federal Officers

Add as a footnote to the next-to-last paragraph of note 6, pp. 661-62:

In *Goldey v. Fields*, 606 U.S. 942 (2025), the Supreme Court, in a short *per curiam* opinion with no recorded dissent, relied on *Ziglar* and *Egbert* in holding that there is no *Bivens* remedy for a federal prisoner who claims that officials of the federal Bureau of Prisons violated his Eighth Amendment rights by using excessive force against him. The Court said that such a claim arises in a new context. (*Carlson v. Green*, mentioned in note 2 on Casebook p. 649, recognized a *Bivens* action for a prisoner's Eighth Amendment claim, but the claim was that a

prison official had failed to give proper medical attention to injuries the prisoner had suffered.) The Court also said that special factors counseled hesitation before creating a cause of action for such claims, including that Congress had legislated in the area but had not created a damages remedy for this kind of claim, that allowing the claim could have negative consequences for the extraordinarily difficult task of running a prison, and that an alternative remedial structure already existed.

2. Against State Officers

a. § 1983 and Its Basic Scope

Add as note 4A on p. 674:

4A. In determining whether action is taken "under color of" state law, a court must distinguish between a defendant's official and personal actions. Section 1983 "protects against acts attributable to a State, not those of a private person." *Lindke v. Freed*, 601 U. S. 187 (2024). Even if a defendant is a state official, not everything the defendant does is necessarily done "under color of" state law. Section 1983 covers only those actions by a defendant that would constitute "state action" for Fourteenth Amendment purposes. *Id*..

In *Lindke*, defendant Freed was the city manager of Port Huron, Michigan. He had a personal Facebook page, but he had so many Facebook friends that he designated the page as "public," which meant that anyone could view it. After assuming the position of city manager, his posts to this Facebook page continued to be mostly personal (e.g., photos of his daughter), but some posts related to his city job. During the COVID-19 pandemic, Freed posted some pandemic-related information. Plaintiff Lindke posted comments critical of the city's pandemic response on Freed's Facebook page. Freed deleted the comments and blocked Lindke from posting further comments on Freed's page. Lindke brought suit under § 1983 and claimed that Freed had violated Lindke's First Amendment rights.

The Supreme Court noted that § 1983 does not impose liability for "acts of officers in the ambit of their personal pursuits." It held that "a public official's social-media activity constitutes state action under § 1983 only if the official (1) possessed actual authority to speak on the State's behalf, and (2) purported to exercise that authority when he spoke on social media." The Court remanded the case for application of this test.

b. Wrongs Covered by § 1983

Add to note 3 on p. 685:

c. The Court applied and amplified the principles of *Gonzaga v. Doe* in *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 143 S. Ct. 1444 (2023), which was a suit under § 1983 for enforcement of rights under the Federal Nursing Home Reform Act (FNHRA). FNHRA provides that a nursing facility that receives federal Medicaid funding must "protect and promote the rights of each resident," including "[t]he right to be free from . . . physical or chemical

restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms." 42 U.S.C. § 1396r(c)(1)(A). It also provides that "[a] nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless" specified conditions are met. The plaintiff alleged that Marion County, Indiana, which owned a corporation that owned a nursing home in which the plaintiff resided, violated the plaintiff's rights under these provisions.

In an opinion by Justice Jackson, the Court first reaffirmed that § 1983 protects rights secured by federal statutes, including statutes that impose conditions on the receipt of federal funds. The Court rejected the defendant's argument that such statutes create no enforceable rights because they are "in the nature of a contract" between the federal government and the recipient of federal funds, of which the plaintiff would at best be a third-party beneficiary, and that at common law third-party beneficiaries could not seek enforcement of contract conditions. The Court observed that it was "contestable" whether third-party beneficiaries could seek enforcement of contract conditions at the time § 1983 was enacted, and that, in any event, § 1983 liability was a species of tort liability, not contract liability.

The Court also reaffirmed the rule of *Gonzaga* that to be enforceable under § 1983, "[s]tatutory provisions must *unambiguously* confer individual federal rights." The Court said:

> We have held that the Gonzaga test is satisfied where the provision in question is "'phrased in terms of the persons benefited'" and contains "rights-creating," individual-centric language with an "'unmistakable focus on the benefited class.'" . . . Conversely, we have rejected §1983 enforceability where the statutory provision "contain[ed] no rights-creating language"; had "an aggregate, not individual, focus"; and "serve[d] primarily to direct the [Federal Government's] distribution of public funds." . . .
>
> If a statutory provision surmounts this significant hurdle, it "secure[s]" §1983-enforceable rights, consistent with §1983's text. And because "§1983 generally supplies a remedy for the vindication of rights secured by federal statutes," rights so secured are deemed "presumptively enforceable" under §1983.

The Court held that the FNHRA provisions under which the plaintiff had sued met this test. It noted that both provisions were part of 42 U.S.C. § 1396r(c), "which expressly concerns '[r]equirements *relating to residents' rights*,'" and that both provisions (quoted above) focused on individual residents and unambiguously conferred rights on the residents. This was true, the Court held, even though the statutes "also establish who it is that must respect and honor these statutory rights; namely, the Medicaid-participant nursing homes in which these residents reside."

Finally, the Court held that FNHRA did not impliedly preclude § 1983 remedies. The Court said that under its prior decisions, "the sine qua non of a finding that Congress implicitly intended to preclude a private right of action under § 1983 is incompatibility between enforcement under § 1983 and the enforcement scheme that Congress has enacted." The Court also said that "[p]ut another way, the inquiry boils down to what Congress intended, as divined from text and context." Here, the Court said, "[w]e discern no incompatibility between the

FNHRA's remedial scheme and §1983 enforcement" of the rights under which the plaintiff had sued. Although the statute "authorizes government actors to sanction and correct noncompliant facilities, or, if appropriate, exclude them from the Medicaid program entirely, . . . the statute lacks any indicia of congressional intent to preclude §1983 enforcement, such as an express private judicial right of action or any other provision that might signify that intent." The mere availability of some statutory enforcement mechanisms was not enough to implicitly preclude § 1983 remedies. In prior cases, the Court observed, preclusion of § 1983 remedies was inferred from the existence of other private remedies that required compliance with particular procedures and/or exhaustion of specified administrative remedies. In such cases, allowing § 1983 remedies would have circumvented the limitations Congress placed on other private remedies.

Justice Thomas, dissenting, argued that conditions on receipt of federal funds never "secure" rights, and therefore such conditions are never enforceable under § 1983. Justice Alito, joined by Justice Thomas, also dissented. He agreed with the Court that FNHRA satisfied the test for creation of a federal right, but he argued that FNHRA's creation of limited remedies that federal officials could pursue for violation of FNHRA's funding conditions (such as withdrawing federal funding and imposing civil penalties) impliedly precluded § 1983 remedies.

How does this case clarify the test for which statutory rights may be enforced via § 1983? Note the case's effect on both the test for whether a statute creates a potentially enforceable right and for whether the statute implicitly precludes enforcement of the right via § 1983.

d. In *Medina v. Planned Parenthood South Atlantic*, 145 S. Ct. 2119 (2025), the Court again denied § 1983 relief on the basis of the *Gonzaga* rule. The case concerned the Medicaid program, under which the federal government provides states with funds that the states spend on health care for eligible individuals who lack sufficient income and resources to pay for health care themselves. States participating in the Medicaid program must satisfy numerous federal statutory requirements, including a requirement that the state must allow eligible individuals to obtain a health care service "from any [provider] qualified to perform the service . . . who undertakes to provide" it.

The state of South Carolina announced in 2018 that Planned Parenthood could no longer participate in its Medicaid program, because state law prohibited spending state funds for abortion services, even though Planned Parenthood provided a wide array of health services in South Carolina, not just abortion services. Planned Parenthood and one of its patients brought suit under § 1983, alleging that the state had violated the plaintiff's rights under the "any qualified provider" provision.

The Supreme Court held that the plaintiffs had no claim under § 1983. In an opinion by Justice Gorsuch, the Court held that "*Gonzaga* sets forth our established method for determining whether a spending-power statute confers individual rights" (internal quotation omitted) and that "the relevant [s]tatutory provisions must *unambiguously* confer individual federal rights before a §1983 claim [may] proceed" (internal quotation omitted). The Court said that "it is rare enough for any statute to confer an enforceable right, [and] spending-power statutes like Medicaid are especially unlikely to do so." The Medicaid statute, the Court held, had no clear and unambiguous rights-creating language comparable to the language at issue in *Talevski*. Justice Jackson, joined by Justice Sotomayor and Justice Kagan, dissented. Justice Thomas wrote a

concurrence in which he stated that "this Court's §1983 jurisprudence. . . bears little resemblance to the statute as originally understood" and called for the Court to "reassess § 1983's bounds."

B. Official Immunities

1. Absolute Immunity

Add as note 5A on p. 705:

5A. In justifying absolute immunity, the Court has sometimes noted that a party who is absolutely immune from civil liability is not thereby "beyond the reach of the criminal law." *Imbler v. Pachtman,* 424 U.S. 409, 429 (1976). Thus, a prosecutor or judge whose misconduct could not be the basis of civil liability would still be deterred from committing misconduct by the possibility of criminal liability. *Id.* But in *Trump v. United States*, 144 S. Ct. 2312 (2024), the Supreme Court held that the President of the United States *is* absolutely immune from criminal prosecution for "conduct within his exclusive sphere of constitutional authority" and is presumptively immune from criminal prosecution for "acts within the outer perimeter of his official responsibility." Does this holding support or undermine the case for the President's absolute immunity from civil liability?

Updates to Chapter 10

C. The Scope of Supreme Court Review of Cases Decided by State Courts

2. Adequate and Independent State Grounds

a. What Constitutes an "Adequate" State Ground?

Add as a footnote to paragraph 2.C on page 825: *See also Cruz v. Arizona*, 143 S. Ct. 650 (2023). Cruz was convicted of murder in Arizona state court in 2005. In his sentencing proceeding, he asserted that under *Simmons v. South Carolina*, 512 U. S. 154 (1994), the Fourteenth Amendment's Due Process Clause required the trial judge to instruct the jury that if he were not sentenced to death, his sentence would be life without parole. The state court held that *Simmons* did not apply to the Arizona sentencing statute and refused to give the instruction. Cruz was sentenced to death. He filed a state habeas petition on other grounds, which was denied. Subsequently, *Lynch v. Arizona*, 578 U. S. 613 (2016), held that *Simmons* applied in Arizona. Cruz filed a second state habeas petition, reasserting his argument based on *Simmons*.

The state courts rejected Cruz's state habeas petition on a state-law ground, namely, that state law permitted a second habeas petition only if "there has been a significant change in the law." *Lynch*, the state court held, did not *change* state law; it merely showed that the state courts had been misapplying state law.

The U.S. Supreme Court held that this ruling was not based on an "adequate" state law ground so as to bar Supreme Court review of whether Cruz's conviction complied with Due Process. The Court determined that Arizona courts had previously focused on "how a decision

changes the law that is operative in Arizona, regardless of whether the intervening decision is a state or federal one." The Arizona decision was so "novel" that it implicated the rule, "reserved for the rarest of situations," that an "unforeseeable and unsupported state-court decision on a question of state procedure" is not an adequate ground. Four Justices dissented.

3. The Final Judgment Requirement

Add as paragraph 5A on p. 847:

5A. The Supreme Court applied the second *Cox* exception in *Moore v. Harper*, 143 S. Ct. 2065 (2023), which concerned reapportionment of legislative districts in North Carolina. After the state legislature redrew the state's legislative districts for state and federal elections following the 2020 census, plaintiffs sued in state court and alleged that the districts were unlawful partisan gerrymanders that violated North Carolina's *state* constitution. Among other defenses, the defendants asserted that the *federal* Constitution's Elections Clause, which provides that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . ." means that a state court cannot invalidate federal legislative districts drawn by a state legislature. The case reached the state's highest court, which (in a decision referred to as "*Harper I*") rejected that defense, determined that the case was justiciable as a matter of state law, ruled for the plaintiffs, invalidated the districts drawn by the state legislature, and remanded to the state trial court for it to oversee the creation of (and if necessary, to create) new legislative districts. The U.S. Supreme Court granted certiorari on the Elections Clause defense. Meanwhile, the state trial court rejected new maps drawn by the state legislature and imposed its own maps. On appeal from that decision, the state's highest court affirmed in part, reversed in part, and remanded again ("*Harper II*"), but then (following a judicial election that changed the composition of the court) granted a rehearing petition and issued a decision ("*Harper III*") that "overruled" *Harper I*, "withdrew" *Harper II*, determined that political gerrymandering claims were *not* justiciable as a matter of state law, and dismissed the plaintiffs' claims with prejudice. But the decision did not reinstate the legislative maps that had been invalidated in *Harper I*, and the defendants acknowledged that they were still bound by the judgment in *Harper I* enjoining the use of those maps.

The U.S. Supreme Court then proceeded to review the decision in *Harper I*, as to which it had granted certiorari. The Court held that the case was not moot, as a favorable decision would lift the ban on the use of the legislature's original maps, which was still in effect even though *Harper I* had been overruled. A decision overruling an earlier decision, the Court noted, does not by itself change the *judgment* accompanying that earlier decision. Moreover, the Court held, even though the judgment in *Harper I* was interlocutory and remanded the case for further proceedings, it fell within *Cox*'s second exception, as the issue of the Elections Clause defense would survive and require decision regardless of the outcome on remand. Indeed, the Court observed, the further proceedings in the case showed that the Elections Clause issue *had* survived. The Court proceeded to reject the Elections Clause defense.

Justice Thomas, dissenting for himself and Justices Alito and Gorsuch, believed the case was moot, as the judgment in *Harper III* dismissing the plaintiffs' claims with prejudice meant that there was no obstacle to the state legislature's reinstating its original maps on its own.

Updates to Chapter 11

B. Habeas Corpus for Persons Held Pursuant to a Criminal Conviction

Add as a footnote to the end of paragraph 5 on p. 924:

Cf. Jones v. Hendrix, 143 S. Ct. 1857 (2023). This case concerned 28 U.S.C. § 2255, which provides a substitute for habeas that allows *federal* prisoners who have been criminally convicted to file a motion collaterally challenging their sentences. § 2255(e) provides that a court shall not entertain a habeas petition in behalf of a prisoner who is authorized to apply for relief under § 2255 unless the § 2255 remedy "is inadequate or ineffective to test the legality of his detention." § 2255(h) generally prohibits second or successive motions under § 2255, with exceptions similar to those provided in § 2244.

Jones was convicted in 2000 of violating federal firearms statutes. He filed a § 2255 petition, which was partially successful but which did not result in his release from prison. In 2019 the U.S. Supreme Court, in another case, interpreted the statute under which Jones was convicted narrowly. Jones wanted to challenge his conviction based on this ruling. As he could not file a second § 2255 petition (because his case did not fit within the § 2255(h) exceptions), he filed a habeas petition.

In an opinion by Justice Thomas, the Supreme Court held that § 2255 barred the habeas petition. The case, the Court held, did not fall within the exception for cases where the § 2255 remedy was "inadequate or ineffective." Justice Jackson, dissenting, pointed out that under this rule, even if a subsequent Supreme Court case makes clear that a federal prisoner was convicted for conduct that Congress has not criminalized, the prisoner would have no avenue for relief. The Court said that "Congress has chosen finality over error correction."

Does the Court's willingness to reject a habeas petition from a federal prisoner who may have no other avenue for arguing that he is being confined for having done something that is *not a crime at all* suggest that it might do the same for state prisoners?

Add to note 6 on p. 940:

But in *Andrew v. White*, 145 S. Ct. 75 (2025), the Court distinguished between "the deference federal habeas courts must extend to a state court's 'application of' this Court's precedent with the federal courts' independent obligation to first identify the relevant 'clearly established Federal law.' " The case concerned a habeas petition by a prisoner convicted in state court of murdering her husband. The petitioner asserted that introduction of irrelevant, prejudicial evidence (such as evidence that she dressed provocatively), rendered her state criminal trial

fundamentally unfair in violation of the Fourteenth Amendment's Due Process Clause. The federal district court denied relief, and the court of appeals affirmed on the ground that no Supreme Court case had clearly established that the introduction of irrelevant evidence in a criminal trial could violate the Due Process Clause. The petitioner claimed that a prior case, *Payne v. Tennessee*, 501 U. S. 808 (1991), did clearly establish this point, but the court of appeals characterized the relevant passage from *Payne* as mere dictum.

The Supreme Court summarily reversed. It held that *Payne* had clearly established that introduction of irrelevant evidence in a criminal trial violates the Due Process Clause if it is so unduly prejudicial as to render the trial fundamentally unfair. In response to a suggestion by two dissenting Justices that a reasonable jurist could have agreed with the court of appeals' reading of *Payne*, the Court said that "[t]his Court has no occasion to defer to other federal courts' erroneous interpretations of its own precedent." The Court remanded to the court of appeals for consideration of whether "a fairminded jurist reviewing this record could disagree with Andrew that the trial court's mistaken admission of irrelevant evidence was so 'unduly prejudicial' as to render her trial 'fundamentally unfair.' "

Will it always be possible to distinguish between the question of what a fairminded jurist could think the rule set forth in a Supreme Court opinion is and the question of whether a fairminded jurist could agree that the state courts correctly applied the rule set forth in a Supreme Court opinion to the case at hand? If fairminded jurists could disagree as to what the rule of a prior Supreme Court case is, can a potential reading of that case (with which fairminded jurists might disagree) be "clearly established Federal law," as required by § 2254(d)(1)?

Part II: THE CONSTITUTION AND SELECTED FEDERAL STATUTES

A. The Constitution

Constitution
of the United States of America

Preamble

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. [1] The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

[2] No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[3] Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

[4] When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

[5] The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3. [1] The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

[2] Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

[3] No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

[4] The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

[5] The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

[6] The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

[7] Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4. [1] The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress

may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

[2] The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section 5. [1] Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

[2] Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

[3] Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

[4] Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6. [1] The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

[2] No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7. [1] All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

[2] Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

[3] Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of

Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8. [1] The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

[2] To borrow Money on the credit of the United States;

[3] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

[4] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

[5] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

[6] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

[7] To establish Post Offices and post Roads;

[8] 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;

[9] To constitute Tribunals inferior to the supreme Court;

[10] To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

[11] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

[12] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

[13] To provide and maintain a Navy;

[14] To make Rules for the Government and Regulation of the land and naval Forces;

[15] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

[16] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

[17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; — And

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9. [1] The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

[2] The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

[3] No Bill of Attainder or ex post facto Law shall be passed.

[4] No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

[5] No Tax or Duty shall be laid on Articles exported from any State.

[6] No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

[7] No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

[8] No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10. [1] No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

[2] No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

[3] No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article II

Section 1. [1] The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

[2] Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[3] The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then

from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

[4] The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

[5] No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

[6] In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

[7] The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

[8] Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: — "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2. [1] The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

[2] He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

[3] The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in

Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article III

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. [1] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; — Citizens of different States, — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

[2] In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

[3] The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. [1] Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

[2] The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article IV

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. [1] The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

[2] A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State

from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[3] No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section 3. [1] New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

[2] The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article VI

[1] All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

[2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

[3] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article VII

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Amendment III

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual

punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Amendment XI

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Amendment XII

The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; — The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Amendment XIII

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

Amendment XVII

The Senate of the United States shall be composed of two Senators from each state, elected

by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XVIII

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

Amendment XIX

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Amendment XX

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon

them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission.

Amendment XXI

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

Amendment XXII

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission to the states by the Congress.

Amendment XXIII

Section 1. The District constituting the seat of government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a state; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXIV

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by

reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXV

Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Amendment XXVI

Section 1. The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any state on account of age.

Section 2. The Congress shall have the power to enforce this article by appropriate legislation.

Amendment XXVII

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

B. Selected Federal Statutes

1. Selected Provisions of Title 28, United States Code

PART I—ORGANIZATION OF COURTS

CHAPTER 1—SUPREME COURT

§1. Number of justices; quorum

The Supreme Court of the United States shall consist of a Chief Justice of the United States and eight associate justices, any six of whom shall constitute a quorum.

CHAPTER 3—COURTS OF APPEALS

§43. Creation and composition of courts

(a) There shall be in each circuit a court of appeals, which shall be a court of record, known as the United States Court of Appeals for the circuit.

(b) Each court of appeals shall consist of the circuit judges of the circuit in regular active service. . . .

§44. Appointment, tenure, residence and salary of circuit judges

(a) The President shall appoint, by and with the advice and consent of the Senate, circuit judges for the several circuits [in specified numbers for each circuit] . . . .

(b) Circuit judges shall hold office during good behavior. . . .

§46. Assignment of judges; panels; hearings; quorum

. . . (c) Cases and controversies shall be heard and determined by a court or panel of not more than three judges . . . unless a hearing or rehearing . . . in banc is ordered by a majority of the circuit judges of the circuit who are in regular active service. . . .

CHAPTER 5—DISTRICT COURTS

§132. Creation and composition of district courts

(a) There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district.

(b) Each district court shall consist of the district judge or judges for the district in regular active service. . . .

(c) Except as otherwise provided by law, or rule or order of court, the judicial power of a district court . . . may be exercised by a single judge . . . .

§133. Appointment and number of district judges

(a) The President shall appoint, by and with the advice and consent of the Senate, district judges for the several judicial districts [in specified numbers for each district]. . . .

§134. Tenure and residence of district judges

(a) The district judges shall hold office during good behavior. . . .

CHAPTER 6—BANKRUPTCY JUDGES

§151. Designation of bankruptcy courts

In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district. Each bankruptcy judge, as a judicial officer of the district court, may exercise the authority conferred under this chapter with respect to any action, suit, or proceeding . . . .

§152. Appointment of bankruptcy judges

. . . Each bankruptcy judge to be appointed for a judicial district . . . shall be appointed by the court of appeals of the United States for the circuit in which such district is located. . . . Each bankruptcy judge shall be appointed for a term of fourteen years . . . .

§157. Procedures

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)

(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to—

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate. . .;

(C) counterclaims by the estate against persons filing claims against the estate;

[(D) – (P) specify other core proceedings] . . . .

(c)

(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title. . . .

(e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

§158. Appeals

(a) The district courts of the United States shall have jurisdiction to hear appeals . .

(1) from final judgments, orders, and decrees . . . of bankruptcy judges . . . .

(b)

(1) The judicial council of a circuit shall establish a bankruptcy appellate panel service composed of bankruptcy judges . . . to hear and determine, with the consent of all the parties, appeals under subsection (a) . . . .

(c)

. . . [E]ach appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel . . . unless . . . [any party elects] to have such appeal heard by the district court. . . .

(d)

(1) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b). . . .

CHAPTER 7—UNITED STATES COURT OF FEDERAL CLAIMS

§171. Appointment and number of judges; character of court; designation of chief judge

(a) The President shall appoint, by and with the advice and consent of the Senate, sixteen judges who shall constitute a court of record known as the United States Court of Federal Claims. The court is declared to be a court established under article I of the Constitution of the United States. . . .

§172. Tenure and salaries of judges

(a) Each judge of the United States Court of Federal Claims shall be appointed for a term of fifteen years.

(b) Each judge shall receive a salary at the rate of pay, and in the same manner, as judges of the district courts of the United States. . . .

§174. Assignment of judges; decisions

(a) The judicial power of the United States Court of Federal Claims with respect to any action, suit, or proceeding, except congressional reference cases, shall be exercised by a single judge . . . .

§176. Removal from office

(a) Removal of a judge of the United States Court of Federal Claims during the term for which he is appointed shall be only for incompetency, misconduct, neglect of duty, engaging in the practice of law, or physical or mental disability. Removal shall be by the United States Court of Appeals for the Federal Circuit, but removal may not occur unless a majority of all the judges of such court of appeals concur in the order of removal. . . .

PART IV—JURISDICTION AND VENUE

CHAPTER 81—SUPREME COURT

§1251. Original jurisdiction

(a) The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

(b) The Supreme Court shall have original but not exclusive jurisdiction of:

(1) All actions or proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties;

(2) All controversies between the United States and a State;

(3) All actions or proceedings by a State against the citizens of another State or against aliens.

§1253. Direct appeals from decisions of three-judge courts

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

§1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

§1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a

treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

CHAPTER 83—COURTS OF APPEALS

§1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

§1292. Interlocutory decisions

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States . . . or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court; . . .

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order . . . .

(c) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction—

(1) of an appeal from an interlocutory order or decree described in subsection (a) or (b) of this section in any case over which the court would have jurisdiction of an appeal under section 1295 of this title; and

(2) of an appeal from a judgment in a civil action for patent infringement which would otherwise be appealable to the United States Court of Appeals for the Federal Circuit and is final except for an accounting. . . .

(e) The Supreme Court may prescribe rules, in accordance with section 2072 of this title, to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under subsection (a), (b), (c), or (d).

§1294. Circuits in which decisions reviewable

Except as provided in sections 1292(c), 1292(d), and 1295 of this title, appeals from reviewable decisions of the district . . . courts shall be taken to the courts of appeals as follows:

(1) From a district court of the United States to the court of appeals for the circuit embracing the district . . . .

§1295. Jurisdiction of the United States Court of Appeals for the Federal Circuit

(a) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction—

(1) of an appeal from a final decision of a district court of the United States . . . in any civil action arising under, or in any civil action in which a party has asserted a compulsory counterclaim arising under, any Act of Congress relating to patents or plant variety protection;

(2) of an appeal from a final decision of a district court of the United States . . . if the jurisdiction of that court was based, in whole or in part, on section 1346 of this title, . . . [with certain exceptions];

(3) of an appeal from a final decision of the United States Court of Federal Claims;

[(4) – (14) specify other matters within the Federal Circuit's jurisdiction] . . .

CHAPTER 85—DISTRICT COURTS; JURISDICTION

§1330. Actions against foreign states

(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605–1607 of this title or under any applicable international agreement. . . .

§1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

§1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title—

(1) a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of—

(A) every State and foreign state of which the insured is a citizen;

(B) every State and foreign state by which the insurer has been incorporated; and

(C) the State or foreign state where the insurer has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

(d) . . .

(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which—

(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state. . . .

[Paragraphs (3)-(5) provide exceptions to paragraph (2).]

(6) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs. . . .

§1333. Admiralty, maritime and prize cases

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

(2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize.

§1334. Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11. . . .

§1335. Interpleader

(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person . . . having . . . money or property of the value of $500 or more . . . if (1) Two or more adverse claimants, of diverse citizenship as defined in subsection (a) or (d) of section 1332 of this title, are claiming or may claim to be entitled to such money or property . . . and if (2) the plaintiff has deposited such money or property . . . into the registry of the court, there to abide the judgment of the court. . . .

(b) Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

§1338. Patents, plant variety protection, copyrights, mask works, designs, trademarks, and unfair competition

(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights. . . .

(b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent, plant variety protection or trademark laws. . . .

§1341. Taxes by States

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

§1343. Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote. . . .

§1345. United States as plaintiff

Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress.

§1346. United States as defendant

(a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:

(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected; . . .

(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort, except . . . [cases] which are subject to sections 7104(b)(1) and 7107(a)(1) of title 41. . . .

(b)

(1) Subject to the provisions of chapter 171 of this title, the district courts . . . shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. . . .

(c) The jurisdiction conferred by this section includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever on the part of the United States against any plaintiff commencing an action under this section. . . .

(f) The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States. . . .

§1350. Alien's action for tort

The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.

§1359. Parties collusively joined or made

A district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court.

§1361. Action to compel an officer of the United States to perform his duty

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

§1367. Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

CHAPTER 87—DISTRICT COURTS; VENUE

§1390. Scope

(a) Venue defined.—As used in this chapter, the term "venue" refers to the geographic specification of the proper court or courts for the litigation of a civil action that is within the subject-matter jurisdiction of the district courts in general, and does not refer to any grant or restriction of subject-matter jurisdiction providing for a civil action to be adjudicated only by the district court for a particular district or districts. . . .

§1391. Venue generally

(a) Applicability of Section.—Except as otherwise provided by law—

(1) this section shall govern the venue of all civil actions brought in district courts of the United States; and

(2) the proper venue for a civil action shall be determined without regard to whether the action is local or transitory in nature.

(b) Venue in General.—A civil action may be brought in—

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;

(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or

(3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

(c) Residency.—For all venue purposes—

(1) a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled;

(2) an entity with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question and, if a plaintiff, only in the judicial district in which it maintains its principal place of business; and

(3) a defendant not resident in the United States may be sued in any judicial district, and the joinder of such a defendant shall be disregarded in determining where the action may be brought with respect to other defendants.

(d) Residency of Corporations in States With Multiple Districts.—For purposes of venue under this chapter, in a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts. . . .

§1400. Patents and copyrights, mask works, and designs

(a) Civil actions, suits, or proceedings arising under any Act of Congress relating to copyrights or exclusive rights in mask works or designs may be instituted in the district in which the defendant or his agent resides or may be found.

(b) Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.

§1404. Change of venue

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented. . . .

§1406. Cure or waiver of defects

(a) The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought. . . .

§1407. Multidistrict litigation

(a) When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on multidistrict litigation . . .

(c) Proceedings for the transfer of an action under this section may be initiated by—

(i) the judicial panel on multidistrict litigation upon its own initiative, or

(ii) motion filed with the panel by a party . . . .

§1408. Venue of cases under title 11

Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district—

(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

§1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11

(a) Except as otherwise provided in subsections (b) and (d), a proceeding arising under title 11 or arising in or related to a case under title 11 may be commenced in the district court in which such case is pending. . . .

CHAPTER 89—DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS

§1441. Removal of civil actions

(a) Generally.—Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

(b) Removal Based on Diversity of Citizenship.—

(1) In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.

(2) A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Joinder of Federal Law Claims and State Law Claims.—

(1) If a civil action includes—

(A) a claim arising under the Constitution, laws, or treaties of the United States (within the meaning of section 1331 of this title), and

(B) a claim not within the original or supplemental jurisdiction of the district court or a claim that has been made nonremovable by statute,

the entire action may be removed if the action would be removable without the inclusion of the claim described in subparagraph (B).

(2) Upon removal of an action described in paragraph (1), the district court shall sever from the action all claims described in paragraph (1)(B) and shall remand the severed claims to the State court from which the action was removed. Only defendants against whom a claim described in paragraph (1)(A) has been asserted are required to join in or consent to the removal under paragraph (1). . . .

(f) Derivative Removal Jurisdiction.—The court to which a civil action is removed under this section is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.

§1442. Federal officers or agencies sued or prosecuted

(a) A civil action or criminal prosecution that is commenced in a State court and that is against or directed to any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

(2) A property holder whose title is derived from any such officer, where such action or prosecution affects the validity of any law of the United States.

(3) Any officer of the courts of the United States, for or relating to any act under color of office or in the performance of his duties;

(4) Any officer of either House of Congress, for or relating to any act in the discharge of his official duty under an order of such House. . . .

§1443. Civil rights cases

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

§1445. Nonremovable actions

(a) A civil action in any State court against a railroad or its receivers or trustees, arising under sections 1–4 and 5–10 of the Act of April 22, 1908 (45 U.S.C. 51–54, 55–60), may not be removed to any district court of the United States. . . .

(c) A civil action in any State court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States. . . .

§1446. Procedure for removal of civil actions

(a) Generally.—A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) Requirements; Generally.—

(1) The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

(2)

(A) When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.

(B) Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.

(C) If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.

(3) Except as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

(c) Requirements; Removal Based on Diversity of Citizenship.—

(1) A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.

(2) If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that—

(A) the notice of removal may assert the amount in controversy if the initial pleading seeks—

(i) nonmonetary relief; or

(ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and

(B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).

(3)

(A) If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section 1332(a), information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as an "other paper" under subsection (b)(3).

(B) If the notice of removal is filed more than 1 year after commencement of the action and the district court finds that the plaintiff deliberately failed to disclose the actual amount in controversy to prevent removal, that finding shall be deemed bad faith under paragraph (1). . . .

§1447. Procedure after removal generally

(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise. . . .

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. . . .

(d) An 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.

(e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.

§1453. Removal of class actions

. . . (b) In General.—A class action may be removed to a district court of the United States in accordance with section 1446 (except that the 1-year limitation under section 1446(c)(1) shall not apply), without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed by any defendant without the consent of all defendants.

(c) Review of Remand Orders.—

(1) In general.—Section 1447 shall apply to any removal of a case under this section, except that notwithstanding section 1447(d), a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand a class action to the State court from which it was removed if application is made to the court of appeals not more than 10 days after entry of the order. . . .

§1454. Patent, plant variety protection, and copyright cases

(a) In General.—A civil action in which any party asserts a claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights may be removed to the district court of the United States for the district and division embracing the place where the action is pending.

(b) Special Rules.—The removal of an action under this section shall be made in accordance with section 1446, except that if the removal is based solely on this section—

(1) the action may be removed by any party; and

(2) the time limitations contained in section 1446(b) may be extended at any time for cause shown. . . .

CHAPTER 91—UNITED STATES COURT OF FEDERAL CLAIMS

§1491. Claims against United States . . .

(a)

(1) The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. . . .

(2) To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing

restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. . . .

§1498. Patent and copyright cases

(a) Whenever an invention described in and covered by a patent of the United States is used or manufactured by or for the United States without license of the owner thereof or lawful right to use or manufacture the same, the owner's remedy shall be by action against the United States in the United States Court of Federal Claims for the recovery of his reasonable and entire compensation for such use and manufacture. . . .

(b) Hereafter, whenever the copyright in any work protected under the copyright laws of the United States shall be infringed by the United States . . . the exclusive action which may be brought for such infringement shall be an action by the copyright owner against the United States in the Court of Federal Claims for the recovery of his reasonable and entire compensation as damages for such infringement, including the minimum statutory damages as set forth in section 504(c) of title 17, United States Code . . .

§1500. Pendency of claims in other courts

The United States Court of Federal Claims shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States or any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, directly or indirectly under the authority of the United States.

§1503. Set-offs

The United States Court of Federal Claims shall have jurisdiction to render judgment upon any set-off or demand by the United States against any plaintiff in such court.

PART V—PROCEDURE

CHAPTER 111—GENERAL PROVISIONS

§1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

§1652. State laws as rules of decision

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

§1654. Appearance personally or by counsel

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

§1658. Time limitations on the commencement of civil actions arising under Acts of Congress

(a) Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues. . . .

CHAPTER 115—EVIDENCE; DOCUMENTARY

§1738. State and Territorial statutes and judicial proceedings; full faith and credit

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

CHAPTER 131—RULES OF COURTS

§2071. Rule-making power generally

(a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title. . . .

§2072. Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

§2074. Rules of procedure and evidence; submission to Congress; effective date

(a) The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law. . . .

(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress.

CHAPTER 133—REVIEW—MISCELLANEOUS PROVISIONS

§2104. Reviews of State court decisions

A review by the Supreme Court of a judgment or decree of a State court shall be conducted in the same manner and under the same regulations, and shall have the same effect, as if the judgment or decree reviewed had been rendered in a court of the United States.

§2106. Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

§2109. Quorum of Supreme Court justices absent

If a case brought to the Supreme Court by direct appeal from a district court cannot be heard and determined because of the absence of a quorum of qualified justices, the Chief Justice of the United States may order it remitted to the court of appeals for the circuit including the district in which the case arose, to be heard and determined by that court either sitting in banc or specially constituted and composed of the three circuit judges senior in commission who are able to sit, as such order may direct. . . .

In any other case brought to the Supreme Court for review, which cannot be heard and determined because of the absence of a quorum of qualified justices, if a majority of the qualified justices shall be of opinion that the case cannot be heard and determined at the next ensuing

term, the court shall enter its order affirming the judgment of the court from which the case was brought for review with the same effect as upon affirmance by an equally divided court.

§2111. Harmless error

On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

PART VI—PARTICULAR PROCEEDINGS

CHAPTER 151—DECLARATORY JUDGMENTS

§2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. . . .

§2202. Further relief

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

CHAPTER 153—HABEAS CORPUS

§2241. Power to grant writ

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of habeas corpus shall not extend to a prisoner unless—

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

(e)

(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

§2242. Application

Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf.

It shall allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, if known.

It may be amended or supplemented as provided in the rules of procedure applicable to civil actions.

If addressed to the Supreme Court, a justice thereof or a circuit judge it shall state the reasons for not making application to the district court of the district in which the applicant is held.

§2243. Issuance of writ; return; hearing; decision

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of court, before or after being filed.

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

§2244. Finality of determination

(a) No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255.

(b)

(1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)

(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3)

(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

(4) A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.

(c) In a habeas corpus proceeding brought in behalf of a person in custody pursuant to the judgment of a State court, a prior judgment of the Supreme Court of the United States on an appeal or review by a writ of certiorari at the instance of the prisoner of the decision of such State court, shall be conclusive as to all issues of fact or law with respect to an asserted denial of a Federal right which constitutes ground for discharge in a habeas corpus proceeding, actually adjudicated by the Supreme Court therein, unless the applicant for the writ of habeas corpus shall plead and the court shall find the existence of a material and controlling fact which did not appear in the record of the proceeding in the Supreme Court and the court shall further find that the applicant for the writ of habeas corpus could not have caused such fact to appear in such record by the exercise of reasonable diligence.

(d)

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

§2253. Appeal

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c)

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

§2254. State custody; remedies in Federal courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)

(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)

(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(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.

(e)

(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A) the claim relies on—

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

§2255. Federal custody; remedies on motion attacking sentence

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to

collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

(c) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

(f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

(g) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(h) A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

CHAPTER 154—SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES

§2261. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment

(a) This chapter shall apply to cases arising under section 2254 brought by prisoners in State custody who are subject to a capital sentence. It shall apply only if the provisions of subsections (b) and (c) are satisfied.

(b) Counsel.—This chapter is applicable if—

(1) the Attorney General of the United States certifies that a State has established a mechanism for providing counsel in postconviction proceedings as provided in section 2265; and

(2) counsel was appointed pursuant to that mechanism, petitioner validly waived counsel, petitioner retained counsel, or petitioner was found not to be indigent.

(c) Any mechanism for the appointment, compensation, and reimbursement of counsel as provided in subsection (b) must offer counsel to all State prisoners under capital sentence and must provide for the entry of an order by a court of record . . . [demonstrating that the requirements of subsection (b)(2) were satisfied].

(d) No counsel appointed pursuant to subsections (b) and (c) to represent a State prisoner under capital sentence shall have previously represented the prisoner at trial in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

(e) The ineffectiveness or incompetence of counsel during State or Federal post-conviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under section 2254. This limitation shall not preclude the appointment of different counsel, on the court's own motion or at the request of the prisoner, at any phase of State or Federal post-conviction proceedings on the basis of the ineffectiveness or incompetence of counsel in such proceedings.

§2263. Filing of habeas corpus application; time requirements; tolling rules

(a) Any application under this chapter for habeas corpus relief under section 2254 must be filed in the appropriate district court not later than 180 days after final State court affirmance of the conviction and sentence on direct review or the expiration of the time for seeking such review.

(b) The time requirements established by subsection (a) shall be tolled—

(1) from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner files the petition to secure review by the Supreme Court of the affirmance of a capital sentence on direct review by the court of last resort of the State or other final State court decision on direct review;

(2) from the date on which the first petition for post-conviction review or other collateral relief is filed until the final State court disposition of such petition; and

(3) during an additional period not to exceed 30 days, if—

(A) a motion for an extension of time is filed in the Federal district court that would have jurisdiction over the case upon the filing of a habeas corpus application under section 2254; and

(B) a showing of good cause is made for the failure to file the habeas corpus application within the time period established by this section.

§2264. Scope of Federal review; district court adjudications

(a) Whenever a State prisoner under capital sentence files a petition for habeas corpus relief to which this chapter applies, the district court shall only consider a claim or claims that have been raised and decided on the merits in the State courts, unless the failure to raise the claim properly is—

(1) the result of State action in violation of the Constitution or laws of the United States;

(2) the result of the Supreme Court's recognition of a new Federal right that is made retroactively applicable; or

(3) based on a factual predicate that could not have been discovered through the exercise of due diligence in time to present the claim for State or Federal post-conviction review.

(b) Following review subject to subsections (a), (d), and (e) of section 2254, the court shall rule on the claims properly before it.

CHAPTER 155—INJUNCTIONS; THREE-JUDGE COURTS

§2283. Stay of State court proceedings

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

§2284. Three-judge court; when required; composition; procedure

(a) A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body. . . .

2. Selected Provisions of Title 42, United States Code

§1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

§1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

§1985. Conspiracy to interfere with civil rights

. . . (3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the

purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

§1988. Proceedings in vindication of civil rights

. . . (b) Attorney's fees. In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, the Religious Freedom Restoration Act of 1993, the Religious Land Use and Institutionalized Persons Act of 2000, title VI of the Civil Rights Act of 1964, or section 12361 of Title 34, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) Expert fees. In awarding an attorney's fee under subsection (b) in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

TABLE OF CASES
(principal cases in *italics*)