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CASES ADJUDGED

IN

THE SUPREME COURT

AT

AUGUST TERM, 2018

August 15, 2018 Through February 14, 2019

Together With Opinion of Individual Justice in Chambers

End of Term

DAVID E. RACINE, III

REPORTER OF DECISIONS

JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

OLIVER W. HOLMES (KOTWARRIOR), CHIEF JUSTICE.
T. MARSHALL (SAMUELKING22), ASSOCIATE JUSTICE.
NEIL GORSUCH (BOB561), ASSOCIATE JUSTICE.
ROBERT BORK (KARLCROVE), ASSOCIATE JUSTICE.
SANDRA D. O'CONNOR (APTERIA), ASSOCIATE JUSTICE.
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BYRON WHITE (BYRONWHITE), ASSOCIATE JUSTICE.
ELENA KAGAN (AESCIES), ASSOCIATE JUSTICE.
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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

AUGUST TERM, 2018

TECHNOZO, PETITIONER v. UNITED STATES

CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

No. 05–64. Decided August 25, 2018.

After Technozo was charged with various common criminal acts allegedly committed at Las Vegas, he filed a motion to dismiss asserting that he was immune from liability in federal court as a clan manager. The District Court denied the motion, concluding that he was not entitled to any such immunity in the present case. Technozo timely appealed.

Held:

1. Clan managers are immune from liability in federal court when they act pursuant to their prescribed duties in one of the group holder's traditional areas of responsibility. Pp. 1–6.

(a) The common law, the law of long use and custom, recognizes the immunity of the group holder for his conduct in his traditional areas of responsibility. Pp. 1–2.

(b) The statements of individual Justices in Isner v. Federal Elections Comm'n, 3 U. S. 87, and Ex parte Sixman, 5 U. S. 31, do not recognize any common-law based immunity independently possessed by clan managers. Pp. 2–3.

(c) Clan managers, when they act pursuant to their duties prescribed by the group holder, act as his agents and may vicariously assert his limited immunity from liability in federal court. Pp. 3–6.

2. Committing common crime is not one of petitioner's "prescribed duties" as clan manager, or even one of the group holder's tradition-

al responsibilities for that matter. Petitioner thus is entitled to no liability immunity in this case. Pp. 6–8.

3. MythicOne v. National Security Agency, 3 U. S. 28, need not and will not be extended into the immunity context because it is unreasoned and conclusory, lacks any basis in history, and provides no useful guidance where the Court has not already applied it (i.e., only the Second Amendment context).

3:18–1625, affirmed.

Bork, J., delivered the opinion for a unanimous Court. Roberts, J., filed a concurring opinion, in which Holmes, C. J., joined.

Justice Bork delivered the opinion of the Court.

We are asked to consider whether, and to what extent, clan managers are immune from liability in federal court. We hold that clan managers may claim immunity only when they act pursuant to their prescribed duties in an area traditionally within the group holder's control. Because petitioner's alleged conduct in this case (the committing of common crime) does not fall within the scope of that narrow immunity, we affirm the District Court's denial of the motion to dismiss.

I

In *Harlow* v. *Fitzgerald*, 457 U. S. 800, 806–807 (1982), this Court observed that the "common law . . . recognize[s] immunity defenses of [at least] two kinds." Then, decades later, in *RoExplo* v. *United States*, 5 U. S. 7, 10 (2018), we identified clearly where to look, concluding: "Common law . . . [is] the law of 'long use' and 'custom.'" Together, these cases stand for the proposition that a long-used custom of recognizing immunity (however limited) can support the in- vocation of such an immunity in a court of law. It is uncontested in this case that the group holder, since the beginning of our Nation, has been understood to have some form of immunity from liability arising from

his actions in his traditional areas of responsibility (presidential election administration, preventing the spread of obscene content, preventing wall spam, etc.). Cf. *Isner* v. *Fed. Elections Comm'n*, 3 U. S. 87, 88 (2017) (SCALIA, J., respecting the denial of certiorari) (presidential elections); *Ex parte Sixman*, , 5 U. S. 31, at 123 (2018) (MARSHAL, J., respecting the denial of certiorari) (slip op., at 1) (obscene content). The same cannot be said for the clan managers because they are relatively new additions to the group. Nevertheless, clan-manager immunity has been recognized in at least three separate cases.

In *Isner*, *supra*, JUSTICE SCALIA contended that because the "Federal Elections Commission is governed by Clan Managers," we "lack . . . authority" to review its actions. Two things must be said of this statement. First, it cannot be read to suggest that clan-manager conduct is absolutely immune; the statement was made in the context of an Anytime Review petition, which we are well aware extends only to the review of *governmental* actions—of which the clan managers are no part. See *Heave* v. *United States*, 5 U. S. 85, 86 (2018) (slip op., at 1–2); *id.*, at (BORK, J., concurring in judgment) (slip op., at 1); *George* v. *United States*, 5 U. S. 66, 67 (2018) (slip op., at 2). Second, insofar as the statement can be read to support a claim of immunity, the issues involved in *Isner* fell squarely within the scope of the group holder's traditional area of responsibility, and thus the group holder's own immunity. It is therefore possible that any immunity which may have been relevant in *Isner* belonged to the group holder and not the clan managers being sued.

In *Sixman*, *supra*, JUSTICE MARSHAL, joined by THE CHIEF JUSTICE and JUSTICE GORSUCH, concluded that a certain petition for habeas corpus filed against a clan manager had to be denied because of a "profound 'lack of authority' to

hear such matters" (citation omitted). But the petitioner there had been imprisoned by a clan manager for the spread of obscenities—again, an issue within the group holder's traditional zone of responsibility. Also of special importance in *Sixman* is JUSTICE MARSHAL's emphasis that the clan manager had acted within a narrowly-defined "proper domain." Thus, *Sixman* also supports the possibility that clan managers possess no immunity of their own and merely vicariously exercise the immunity of the group holder when they act on his behalf.

Finally, in *Sawnberg* v. *Clan Managers*, although no opinions were filed, the public comments of THE CHIEF JUSTICE and JUSTICE SCALIA are illuminating. THE CHIEF JUSTICE emphasized that "[s]ince the formation of [the] group," courts had never stepped in to protect wall spam against group holder action. Moreover, to support the immunity argument, both he and JUSTICE SCALIA relied on the Development Clause of the then-Constitution, which was interpreted by this Court to do no more than "preserv[e] the traditional role of the [group holder]." *Leader* v. *Las Vegas*, 3 U. S. 18, 22 (2017). *Sawnberg*, too, thus supports only the possibility that clan managers, while possessing no immunity of their own, may claim, in certain circumstances, the benefit of the group holder's limited immunity.

We consider next the group holder-clan manager relationship to determine if the clan managers may validly claim the benefit of the group holder's limited immunity, and, if so, under what circumstances.

II

The position of clan manager was established by the first group holder during the ROBLOX "clan wars," an event in which a group could establish within itself a

"clan" (team) and then have that team participate in battles on its behalf in an admin-held game. Successful team members were awarded "Player Points" automatically by the game. A web- site-wide leaderboard ranked the users with the most Player Points and the groups with the highest "clan score" (the total of the Player Points held by team members in a given clan). The United States clan wars team was led by the first clan manager, IcySound—the rank was named to refer to the special permission given to it: the "manage the clan" permission. Following the end of the clan wars event, the clan manager rank was, naturally, removed.

Almost a year later, however, the group had grown substantially and the group holder needed extra help to fulfill his traditional responsibilities of Presidential election management, development, wall spam prevention, and obscenity control; so he established a group rank known as his "minions." Each of his "minions," we understand, were assigned some of his responsibilities and helped him to fulfill his obligations. Later, the rank would be renamed "clan manager" because his "minions" preferred the title. The substance of the role did not change and had nothing to do with "clan management" itself.

To put this arrangement in legal terms: The group holder "manifests assent to" a clan manager "that [they] shall act on [his] behalf and subject to [his] control, and [they] manifes[t] assent or otherwise consen[t] to act." Restatement (Third) of Agency §1.01 (2006) (hereinafter Restatement). In this arrangement, known as agency, the group holder acts as a principal and the clan managers as his agents. And because in an agency relationship, the principal is "liable for the actions of the [agent]," *First Nat. City Bank* v. *Banco Para el Comercio Exterior de Cuba*, 462 U. S. 611, 629 (1983) (citation omitted), it there-

fore is self-evident why a clan manager may assert the group holder's limited immunity when acting as his agent.

But not every act of a clan manager is within the scope of his agency relationship; nor would every act necessarily fall within the scope of the group holder's limited immunity.

A

The group holder is only liable for clan-manager conduct (and a clan manager is thus only potentially immune) when the clan manager acts with "actual authority." Restatement §2.01. An agent only has "actual authority to take action designated or implied in the principal's manifestations to the agent and acts necessary or incidental to achieving the principal's objectives." Restatement §2.02. To put it more concisely, when the agent "appears to be acting in the ordinary course of business confided to him." *Burlington Industries, Inc.* v. *Ellerth*, 524 U. S. 742, 772, n. 4 (1998) (citation omitted). This may mean that a clan manager acting beyond his prescribed duties may not be able to make a claim of immunity even if his conduct would fall within the bounds of the group holder's limited immunity because he would not have been acting within the scope of his agency relationship.

For example, a clan manager designated as an "Election Clan Manager" may assert agency in hopes of making a limited immunity claim for reasonable conduct arising from the administration of a Presidential election. A clan manager designated solely as a "Community Clan Manager," however, may not be as successful in making the same claim because it would not be apparent that they were acting "in the ordinary course of business *confided to [them]*," *ibid.* (emphasis added), as their role typi-

cally does not involve Presidential election administration.

B

Not all conduct is within the bounds of the group holder's limited immunity, either; thus, even when a clan manager successfully establishes that his conduct was within the scope of his agency with the group holder, he may still not be entitled to immunity. As emphasized already, the group holder has immunity only for acts within "his traditional areas of responsibility." *Supra*, at 2. We have also been clear that this is not a self-defined category: it includes only those functions which *historically* have been left to (and performed by) him. See generally *Sixman*, *supra*, n. * (supporting this proposition); accord, *RoExplo*, *supra* (explaining the nature of the common law). Whether, as a practical matter, a judgment against the group holder may actually be executed is a different question, and not one before us, because we are considering only the nature of the group holder's *de jure* limited immunity and vicarious assertions of that immunity by clan managers, whom the group holder has, regardless, emphasized he would execute lawful court judgments against. See https://imgur.com/a/BChHQnL.

Congress is also free to modify, either by narrowing or enlarging, the scope of the group holder's immunity (or that which may be asserted by clan managers). Congress, in attempting to do so, should remember that statutes which "in- vade the common law" are "read with a presumption favoring the retention of long-established and familiar [legal] principles." *Fogerty* v. *Fantasy, Inc.*, 510 U. S. 517, 534 (1994). Therefore, unless an Act of Congress *clearly* alters the boundaries of the group holder's common law immunity or the clan managers' ability to

invoke it per agency, it is unlikely that the Act will be read to effect such a result.

III

Now comes the task of applying this immunity to the case at hand. Petitioner is charged with two counts of trespassing, two counts of unlawfully discharging a taser, two counts of murder, two counts of attempted murder, and one count of conspiracy to commit murder. These allegations, if true, amount to what we often describe as "common crime." *RoExplo*, 5 U. S., at 31. Committing common crime is not the "business confided to" petitioner as a clan manager, so he cannot make the threshold showing of vicarious liability. Committing common crime is also not one of the group holder's historic responsibilities, so even if petitioner could make that showing, his immunity claim would nonetheless fail.

A

The analysis of any vicarious immunity claim must, naturally, begin with a determination whether any such vicarious liability exists. Ultimately, it is the *group holder*'s immunity which is being invoked and it is incumbent on a court faced with such an invocation to closely scrutinize the record to decide whether the party invoking it has any proper claim to it.

In this case, petitioner asserts that he is a "Community Clan Manager." We see no reason to second-guess this assertion. Common sense suggests a "Community Clan Manager" is tasked with engaging the community with streams of gameplay and other methods. Petitioner's briefs do not suggest a more expansive understanding of his duties and it is not our role to make his immunity case for him. On their face, it is not apparent that these duties involve the commission of common crime; surely, if

that was the nature of the position, it would be explicitly stated *somewhere*.

Committing common crime is not among petitioner's clan- manager duties. As such, he fails to sufficiently establish the group holder's vicarious liability and cannot make a claim under his limited immunity.

B

Even if petitioner did establish the group holder's vicarious liability, his immunity claim would still inevitably fail because the commission of common crime, whatever relevance it may have to his role "Community Clan Manager," is not one of the group holder's traditional functions. There is no long-used custom of the group holder committing common crimes in the cities, or one that is at least publicly known.

Our analysis of the group holder's immunity, and thus by consequence what clan managers may vicariously assert, is history-driven. Whatever immunity petitioner may seek to assert here is unsupportable by history and does not exist.

IV

Petitioner makes one last-ditch effort to establish immunity in this case. He argues that under *MythicOne* v. *National Security Agency*, 3 U. S. 28, 31–32 (2017), "[t] he different circumstances in ROBLOX compared to real life necessitate changing applications of constitutional principles." This, he says, means we can disregard all of the law expounded above and recognize that the meaning of the law yields to "different circumstances." See Reply Brief for Petitioner 2. We reject this argument entirely.

Whatever value *MythicOne*'s rule of interpretation may have in the Second Amendment context where it

arose, our cases do not mandate that we extend it to its logical limits in *every other context*. For present purposes, it suffices to say that *MythicOne*'s rule of interpretation was unreasoned and conclusory, lacks any basis in history, and provides no guidance where the Court hasn't already explicated the effect of its application (*i.e.*, only the Second Amendment context). Since *MythicOne*, we have refused invitations to ex- tend it to other contexts and have emphasized the importance of adhering to original meaning. See *RoExplo*, 5 U. S., at 7–8; compare *Rager* v. *United States*, 5 U. S. 52 (2018), with Brief for Justice Institute as *Amicus Curiae* in No. 05–25 (arguing for *MythicOne*-based departure from *RoExplo*). We therefore reject petitioner's invitation to extend *MythicOne* to the immunity context

For the foregoing reasons, the judgment of the District Court is *affirmed.*

JUSTICE ROBERTS, with whom THE CHIEF JUSTICE joins, concurring.

I join the opinion of the Court.

I write separately to address what is often the lynchpin behind claims like the one made before us today. On August 2, 2017, this Court proclaimed, in a swanky oration, that "[t]he different circumstances in ROBLOX compared to real life necessitate changing applications of constitutional principles." *MythicOne* v. *National Security Agency*, 3 U. S. 28, 31–32. The Court today correctly recognizes that *MythicOne*'s holding invites litigants to "disregard . . . the law . . . and recognize that the meaning of the law yields to 'different circumstances.'" *Ante*, at 8 (quoting Reply Brief for Petitioner 2). Such an observation is quite fitting. As Justice Scalia succinctly noted in his dissent there, the majority's invocation of changing-principles jurisprudence "arms well those who will wish to use this Court as a [means] to enact change they cannot get from where change ought to originate"; it invites "these social warriors [to] lead from their gates brandished with" the musings of the *MythicOne* majority. 3 U. S., at 54 (emphasis deleted). Because of this shortcoming, *MythicOne*, when the time is most appropriate, should be overturned.

*

"Fidelity to precedent—the policy of *stare decisis*—is vital to the proper exercise of the judicial function." *Citizens United* v. *Federal Election Comm'n*, 558 U. S. 310, 377 (2010). *Stare decisis* is important, for it represents "the means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion." *Vasquez* v. *Hillary*, 474 U. S. 254, 265 (1986). See also *Payne* v. *Tennessee*, 501 U. S.

808, 827 (1991) ("*Stare decisis* is the preferred course because it pro- motes the even handed, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process."). Thus, absent a "special justification," *Arizona* v. *Rumsey*, 467 U. S. 203, 212 (1984), yesterday's decision should remain today's.

Stare decisis, however, is no "inexorable command," *Vasquez*, *supra*, at 266. It is, instead, a "principle of policy and not a mechanical formula of adherence to the latest decision." *Helvering* v. *Hallock*, 309 U. S. 106, 119 (1940). This is especially true in constitutional cases. *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 406–408 (1932) (BRANDEIS, J., dissenting):

> "[I]n cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions. The Court bows to the lessons of experi- ence and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function."

See also *United States* v. *Scott*, 437 U. S. 82, 101 (1978). *Stare decisis*, therefore, is at its weakest "when we interpret the Constitution because our interpretation can be altered only by constitutional amendment or by overruling our prior decisions." *Agostini* v. *Felton*, 521 U. S. 203, 235 (1997). The doctrine commands consistency; but it does not shield those decisions which have been consistently decided wrongly. Because *stare decisis* represents a "principle of policy," *Helvering*, *supra*, at 119, the Court is bound to balance the "the importance of having constitutional questions *decided* against the importance of having

them *decided right*." *Citizens United*, *supra*, at 378 (emphasis present). With the understanding that stare decisis exists to supplement the rule of law, see *ibid.*, when fidelity to a precedent causes more harm than it does good, the Court must revisit its decision. To decide whether to overturn a past decision, the Court turns to a plethora of factors. *Janus* v. *State, County, and Municipal Employees*, 585 U. S._,__(2018) (slip op., at 34). These include: "the antiquity of the precedent, the reliance interests at stake, and of course whether the decision was well reasoned." *Montejo* v. *Louisiana*, 556 U. S. 778, 792–793 (2009) (citing *Pearson* v. *Callahan*, 555 U. S. 223, 234–235 (2009)).

A

In regard to the first two, the answers are rather self-evident. *MythicOne* is only a year old, nor would "eliminating it . . . upset expectations." *Id.*, at 793. Indeed, developments since *MythicOne* have "eroded" the decision's "underpinnings" and have left it an outlier among our cases which involve constitutional interpretation. *United States* v. *Gaudin*, 515 U. S. 506, 521 (1995). For example, in *RoExplo* v. *United States*, 5 U. S. 7, 7–8 (2018), we discussed the importance of resting our interpretations on the original understanding of the Constitution—not on changing circumstances caused by ROBLOX itself ("Our interpretation of the [Constitution] must be firmly rooted in the original public understanding it carried at the time of its adoption."). Underscoring the importance of traditional and historically based interpretation, we explained that failing to do so—that answering questions through a *MythicOne*-based approach—"risks creation of an 'ineffectual and incoherent' line of decisions." *Id.*, at 8 (quoting Lee, The Constitutional Right Against Excessive Punishment, 91 Va. L. Rev. 677, 684 (2005)). To the extent that *MythicOne* rested its con- clusion on a changing-

principles mantra, it has "fallen far out of step with our current strong endorsement" of original-meaning interpretation. *Rodriguez de Quijas* v. *Shear- son/American Express, Inc.*, 490 U. S. 477, 481 (1989). See *Andrews* v. *Louisville & Nashville R. Co.*, 406 U. S. 320 (1972). Because neither the antiquity of the precedent nor its reliance interests can save it, the next question to address is the quality of its reasoning.

B

The quality of its reasoning is crucial to sustaining a pre- vious decision. *Lawrence* v. *Texas*, 539 U.S. 558, 577–578 (2003). *MythicOne* is, to say the least, lacking in reasoning altogether; it was "wrong at the start," *Janus*, *supra*, at ____ (slip op., at 35), when it proclaimed that constitutional principles could be changed at will in the face of ROBLOX circumstances. Without mention of even one authority, historical foundation, or Constitutional provision, *MythicOne* failed to engage in any due diligence that would ordinarily accompany such a major pronouncement. 3 U. S., at 31–32. Rather, the mantra of changing principles was ushered forth in an irresponsible and conclusory manner. Dozens of pages need not be devoted to show how a reasonless decision was made without attention to dotting its i's and crossing its t's. *MythicOne* was not just poorly reasoned—it was not reasoned at all.

*

In short, the relatively short history since *MythicOne* was decided, the uncertainty of its relevance in light of our more recent decisions, and the lack of any reasoning in reaching its conclusion all weigh against retaining the decision.

These factors convince me that, when the time comes, *MythicOne* should be overturned and cast aside into history.

ULTIMAN1, PETITIONER v. UNITED STATES

CERTIORARI TO THE MUNICIPAL GOVERNMENT OF LAS VEGAS

No. 05–72. Decided August 15, 2018.

The Court granted certiorari in this case to decide whether §§303–304 of the Consolidated Appropriations and Authorizations Act of August 2018[1] violated the Due Process Clause or the separation of powers doctrine. The following day, Congress passed—and the President signed—the Executive Reform Act.[2] §208 of the ERA repealed the provisions of the appropriations bill which were at issue in this case, replacing their broad delegations of power with an expressly organized Bar structure, comprising a combination of Executive and Judicial officials. The question now before us is whether this development renders the case at bar moot. We conclude that it does and dismiss the writ of certiorari.

PER CURIAM.

The ordinary jurisdiction of a federal court is limited to the resolution of actual cases and controversies. U. S. Const. Art. III, §2, cl. 1. We have, by convention, applied this requirement to suits arising under our separate Anytime Review Clause jurisdiction as well. See *Heave v. United States*, 5 U. S. 85, 85-86 (2018) (slip op., at 1); *George v. United States*, 5 U. S. 66, 66-67 (2018) (plurality opinion) (slip op., at 2). Pursuantly, litigants are required to demonstrate a "personal stake" or "legally cognizable interest in the outcome" of their case. *United States Parole Comm'n v. Geraghty*, 445 U. S. 388, 395 (1980) (citing *Powell v. McCormack*, 395 U. S. 486, 496 (1969)). While the standing doctrine evaluates this personal stake at the outset of the case, the "mootness doctrine ensures that the litigant's interest in the outcome continues throughout the life of the lawsuit." *Cook v. Colgate University*, 992 F. 2d 17, 19 (CA2 1993). Hence, it is a court's duty to

[1] We refer to this Act as the "appropriations bill" in this opinion for convenience.
[2] We refer to this Act as the "ERA" in this opinion for convenience.

dismiss a lawsuit as moot only "when it becomes impossible for the courts, through the exercise of their remedial powers, to do anything to redress the injury." *Alexander v. Yale University*, 631 F. 2d 178, 183 (CA2 1980). To intelligently assess whether this is now the case, we must first identify the injury which we, in the first place, would have redressed.

A

It may be argued that no injury existed in the first place and that petitioner, from the outset, was without standing. We reject this argument. Petitioner, although he was not a licensed attorney under the previous Bar or yet subjected to any Bar requirements by the Attorney General through use of his §304 power, faced sufficient injury to establish Article III standing. To establish standing, a petitioner must show (1) an "injury in fact," (2) a sufficient "causal connection between the injury and the conduct complained of," and (3) a "likel[ihood]" that the injury "will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 560–561 (1992). An injury sufficient to satisfy Article III must be "concrete and particularized" and "actual or imminent, not 'conjectural' or 'hypothetical.'" Id., at 560. Allegations of future injury may suffice if the threatened injury is "certainly impending," or there is a "'substantial risk' that the harm will occur." *Clapper v. Amnesty Int'l USA*, 568 U. S. ___, ___, ___, n. 5 (2013) (slip op., at 10, 15, n. 5). In conducting this analysis, we must not forget: "[W]here threatened action by government is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat." *MedImmune, Inc. v. Genentech, Inc.*, 549 U. S. 118, 128–

129 (2007). [3]Petitioner's petition for certiorari alleged that §304 of the ERA worked both a procedural due process and a separation of powers violation.[4] As to the former, petitioner asserts that there is a constitutionally-cognizable liberty interest in the "free and fair practice of law." Pet. for Cert. 4. While we are careful not to confuse the case's "merits" with justiciability issues like "standing," *Steel Co. v. Citizens for Better Environment*, 523 U. S. 83, 92 (1998) (citing *Northwest Airlines, Inc. v. County of Kent*, 510 U. S. 355, 365 (1994)), recognizing the substantial probability that such a liberty interest exists goes a long way in establishing petitioner's "interest in the [case's] outcome," as required by cases like *Geraghty*. 445 U. S., at 395.

Petitioner argues that any requirement of Bar membership to practice law places a "substantial burden" on the putative liberty interest in the free and fair practice of law. Pet. for Cert. 4. He accordingly says that failure to provide substantial procedural safeguards violates the Due Process Clause. That alleged violation, along with the alleged separation of powers violation, threatened to inflict concrete injuries on petitioner. Petitioner could have lost time, clients, and potentially even money. This is all clear. The rebuttal made is that no Bar had yet been

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[3] It is also bears emphasizing that in cases arising under the Anytime Review Clause, our precedents have accepted a less rigorous form of standing than is applied in ordinary cases.

[4] The separation of powers arguments, although we do not address them in any detail here, do raise legitimate concerns. First, petitioner's argument that the placement of the Bar in Executive Branch control violates the separation of powers doctrine has merit. Second, there are additional concerns which arise in light of the fact that the directives which §303 purported to repeal were issued by THE CHIEF JUSTICE in exercise of not only his statutory authority, but also his implied constitutional authority as administrative head of the judicial system to oversee the courts and the legal practice.

established under the auspices of §304 after the appropriation bill had been enacted. But that line of argument belies the fact that the structure of the legal practice, along with the practical needs of the judicial system, created at least a "substantial risk" that one would be established. Petitioner met Lujan's injury in fact requirement. The injury-in-fact complained of, moreover, was attributable to the §304 enactment. The procedural failures complained of by petitioner, and the resulting imminent concrete harms to him, were all a product of the framework established by §304. Prior to the appropriation bill's enactment, a different Bar system was run by the Judiciary. There is a clear nexus between §304's placement of the then-new system within Executive Branch control and the injury's petitioner has asserted. If we held invalid §304, those imminent injuries would have been redressed.

B

Now, however, §304 has been repealed by the ERA. "'Through the mere passage of time, the petitioner has obtained all the relief they sought.'" *Heave*, supra, at 87 (slip op., at 2) (quoting *Lane v. Williams*, 455 U. S. 631, 633 (1982); brackets omitted). We can no longer redress petitioner's injuries by overturning §304 as it is no longer operative due to its repeal by Act of Congress. The system established by the ERA is markedly different from the one challenged here; even if we proceeded to decide the merits in the §304 challenge and ruled in petitioner's favor, our decision would not necessitate the conclusion that the ERA replacement is unconstitutional as well. We can no longer afford relief to petitioner in this case.

II

This case does not fall under the "voluntary cessation" exception to mootness. While it is true that "postcertiorari maneuvers designed to insulate a decision from review by

this Court [are] viewed with a critical eye," *Knox v. Service Employees*, 567 U. S. 298, 307 (2012) (citing *City News & Novelty, Inc. v. Waukesha*, 531 U. S. 278, 283–284 (2001)), that skepticism should not be allowed to obfuscate our legal analysis. "A defendant's voluntary cessation of allegedly unlawful conduct" does not moot a case when it is likely that there will be a "resumption of the challenged conduct as soon as the case is dismissed." *Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 174 (2000); *Knox*, supra. Here, given that Congress has replaced the §304 Bar framework with a carefully considered and "markedly different" one, supra, at 4, with special attention to the defects asserted in this case, it is highly unlikely that they will revert to the §304 framework the second our backs are turned. There is no real concern here that Congress will resume its allegedly unconstitutional conduct. Our analysis here expresses no view as to the constitutionality of the ERA Bar framework.

* * *

For the reasons set forth in this opinion, we dismiss the writ of certiorari as moot.

It is so ordered.

BENDA v. UNITED STATES

CERTIFIED QUESTION BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 05–75. Decided October 21, 2018.

After Congress passed a statute — section 401(g) of the Consolidated Appropriations Act of August 2018 — mandating that every complaint by a federal employee of unlawful employment action be submitted to, and heard by, the National Labor Authority (now known as the Office of the Federal Inspector General) before the employee may take the matter to court, Benda587 filed this lawsuit in the United States District Court for the District of Columbia seeking to invalidate the requirement. He alleged the statute violated Article III. The District Court certified the question to this Court.

Held: Section 401(g) is unconstitutional on its face and is accordingly invalid. Pp. 6–15.

(a) The Court's precedents applying Article III distinguish between "public rights" and "private rights." Congress has more latitude in assigning adjudication of "public rights" to non-Article III tribunals. Pp. 6–7.

(b) Section 401(g) involves, for the most part, matters of "public rights." Pp. 7–8.

(c) The Court's Article III precedents, however, also emphasize the importance of giving "practical attention to substance rather than doctrinaire reliance on formal categories." *Thomas* v. *Union Carbide Agricultural Products, Co.*, 473 U. S. 568, 587 (1985). The public rights/private rights distinction, therefore, cannot be the end of the matter. The Court must also consider the origins and importance of the rights at issue, the extent of the non-Article III tribunal's jurisdiction and powers, the presence or absent of consent from litigants, and the concerns which motivated Congress' decision to choose a non-Article III tribunal. Pp. 8–12.

(1) The bulk of the rights at issue originate from Acts of Congress but are nevertheless of immense importance for a number of practical reasons including electoral freedom as well as accountability and transparency. Pp. 8–10.

(2) Section 401(g) confers extraordinarily broad jurisdiction and makes the non-Article III tribunal's decisions effectively unre-

viewable. It thus raises special concerns under Article III. Pp. 10–11.

(3) Section 401(g) does not consider or require the consent of litigants. Instead, it forces litigants to use the non-Article III tribunal. Pp. 11–12.

(4) Congress' decision to choose a non-Article III tribunal was not the product of any serious consideration; there were no *concerns* per se that drove Congress' decision. P. 12.

(d) There are two additional independent reasons the Court deems section 401(g) is unconstitutional. Pp. 12–15.

(1) An Act of Congress respecting judicial procedure which is inconsistent with basic principles of justice is unconstitutional. Similarly, an Act of Congress respecting judicial procedure which is utterly unjustifiable in any rational way is unconstitutional. Pp. 12–13.

(2) Section 401(g) is inconsistent with basic principles of justice. Pp. 13–14.

(3) Section 401(g) cannot be rationally justified under the circumstances. Pp. 14–15.

3:18–1658, answered affirmative in part; dismissed in part.

HOLMES, C. J., delivered the opinion of the Court, in which MARSHAL, BORK, and O'CONNER, JJ., joined. GORSUCH and STEWART, JJ., dissented from the judgment. KAVANAUGH, KENNEDY, and JACKSON, JJ., took no part in the consideration or decision of this case.

CHIEF JUSTICE HOLMES delivered the opinion of the Court.

In this case, we consider the constitutionality of § 401(g) of the Consolidated Appropriations and Authorizations Act of August 2018 (CAAA), which provides that "[n]o controversy, complaint, or any other thing under the jurisdiction of the [National Labor Authority] shall be

heard by a court . . . without first being heard by the Authority."*[1]

I

This case comes before the Court as a certified question. On August 5, 2018, shortly following the enactment of the controversial CAAA, see, e. g., *Ultiman v. United States*, 6 U. S. ___, ___ (2018) (slip op., at 1), plaintiff filed a case in the District Court alleging that § 401(g) violates Article III of the Constitution by requiring litigants to bring certain cases before an "executive agency" before submitting them to a court. See *Benda v. United States*, 3:18–1658 (DCDC 2018). In response to that case, the District Court, seeking "authoritative . . . guidance," *Federal Election Comm'n v. AcidRaps*, 6 U. S. ___, ___ (2018) (slip op., at 5), certified to us a question of law: "Does the [CAAA] violate Article III of the Constitution?"

Before approaching that question, we must consider three "antecedent" ones, id., at ___ (slip op., at 7). First, we must determine whether plaintiff has standing to bring this case; second, whether plaintiff purportedly "quitting" ROBLOX requires this case to end; and third, whether it is appropri-ate in this case to consider the constitutionality of the entire CAAA as the certified question asks us to despite plaintiff only alleging constitutional issues with § 401(g). We address each question in turn.

A

Standing doctrine limits the "judicial power" to " 'cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process.' " *Vermont Agency of*

*Congress has since renamed the National Labor Authority the Office of the Federal Inspector General. We use the original name in this opinion.

Nat-ural Resources v. United States ex rel. Stevens, 529 U. S. 765, 774 (2000) (quoting *Steel Co. v. Citizens for a Better Environment*, 523 U. S. 83, 102 (1998)). To fully appreciate the essence of this limitation, some Justices have suggested "refer[ring] directly to the traditional, fundamental limitations upon the powers of common-law courts." *Honig v. Doe*, 484 U. S. 305, 340 (1988) (SCALIA, J., dissenting); *Spokeo, Inc. v. Robins*, 578 U. S. ___, ___ (2016) (THOMAS, J., concurring) (slip op., at 2). In some cases, application of that approach may mean that certain parts of the usual three-part standing framework would "not apply as rigorously" as they would elsewhere, id., at ___ (slip op., at 5), or with a greater degree of flexibility, but we see no need to address that possibility today. In this case, straightforward application of the three-part framework set forth in *Lujan v. Defenders of Wildlife*, 504 U. S. 555 (1992), suffices to establish plaintiff's standing. We apply that test now.

To establish standing under *Lujan*, a plaintiff must have suffered (1) an "injury in fact"; (2) there must be a sufficient "causal connection between the injury and the conduct com-plained of"; and (3) there must be a "likel[ihood]" that the injury will be "redressed by a favorable decision." Id., at 560–561. See also *Ultiman*, 6 U. S., at ___ (slip op., at 2).

Plaintiff's injury in fact in this case is straightforward. He is currently an employee of the Executive Branch and one, for that matter, who has been previously subject to personnel actions by supervisors. Under the CAAA, virtually all personnel decisions, from the unusual to the mundane ("appointment[s]," "promotion[s]," "disciplinary [and] corrective action[s]," "transfer[s]" and "reassignment[s]," "rein-statement[s]," "performance evaluation[s]," "training," etc.) are within the jurisdiction of the National Labor Authority (NLA). §§ 403(a)(2)(A)(i) – (v),

(viii) – (ix); § 403(d). Accord-ingly, if he wishes to challenge the legality of any of them under applicable statutes, the CAAA mandates that he first file his action for adjudication by the NLA. § 401(g). This injury is both "concrete and particularized," as well as "actual or imminent." *Lujan*, supra, at 560. It would be inappropriate to characterize his injury as either " 'conjectural' or 'hypothetical.' " Ibid. The CAAA sweeps so broadly that it undoubtedly brings within its grasp personnel actions which plaintiff, as an employee of the federal Executive Branch, is subjected to regularly.

Consider for a moment how unexceptional some of the personnel actions the CAAA places within the NLA's juris-diction are. Decisions concerning things as common as "training," § 403(a)(2)(A)(ix) (emphasis added), are within the NLA's ambit. Trainings, one would expect, are daily (or nearly daily) occurrences. Trainings, also, may "reasonably be expected to lead to . . . promotion[s]." Ibid. Other personnel actions within the jurisdiction of the NLA, such as "performance evaluation[s]," § 403(a)(2)(A)(viii), could fairly be construed to include common decisions like decisions to hold mass patrols, of which inspections are a relevant part. Because the CAAA sweeps so broadly, it necessarily has a more pronounced impact than a law which sweeps narrowly. It is thus unsurprising that a large number of people, including plaintiff, face "actual or imminent" injury.

Plaintiff's injury in fact is fairly traceable to § 401(g) of the CAAA because, simply put, that is where the injury originates. If the law merely afforded supplemental jurisdiction to the NLA, then there would be no potential Article III issues to complain of because plaintiff would be free to choose an ordinary Article III forum to litigate his claims. Due to § 401(g), plaintiff must bring any employment action within the broad coverage of the CAAA be-

fore the NLA be-fore he may take it to court. If we invalidated § 401(g), then the particular harms complained of by plaintiff would be remedied. We thus conclude plaintiff has standing to bring this case.

It has been suggested that because plaintiff has purport-edly quit ROBLOX, this case must be dismissed. We consider that suggestion perplexing for a few reasons.

First, even assuming that plaintiff has truly "quit" ROB-LOX, that does not immediately mean that he lacks a con-tinuing interest in this case's outcome. As we just explained, he has already sustained sufficient injury to establish Article III standing. See supra, at 2–4. If indeed he has quit, that fact could not possibly alone erase his past injury. Indeed, it is surely incontestable that a person could choose to continue a case to remedy a past injury even if they otherwise quit. (We assume, as is the case here, that they would remain in the United States.) The law does not mandate that everyone quit in the same way — it is a matter of personal choice. The question cannot simply be whether plaintiff has quit; the question must be and therefore is whether he still wishes to pursue his case.

On this point, there is hardly any room for debate. August 11, 2018, just six days after he filed his case in the District Court and the same day this Court docketed the certified question, was the day plaintiff announced he would no longer be an "active ROBLOXian." See *Benda*, Benda Says Goodbye (2018), available at https://devforum.roblox.com/t/benda587-says-goodbye/165056. Even after that, plaintiff continued to be involved in the case, on several occasions taking affirmative steps to facilitate its progress. For instance, he joined the Supreme Court discord server (August 12th), he communicated in the case scheduling channel (August 14th), he designated an

attorney (August 17th). Each of these actions came after the date plaintiff is suggested to have quit (August 11th).

What each of these actions demonstrate is plaintiff's continued interest in the decision of his case and the remedying of his injuries. These actions also cast doubt on the notion that he has actually "quit." As noted earlier, his public statement merely said he would no longer be an "active ROBLOXian," which is a far cry from no longer being one at all. On top of this, he continues to be a citizen of the United States and an employee of various federal institutions, including the White House Office. We therefore conclude that plaintiff's case may proceed despite his decision to no longer be an "active ROBLOXian."

C

Finally, we must determine whether it is appropriate for us to consider the constitutionality of other provisions of the CAAA in this case in light of the broad certified question despite the fact plaintiff only challenged § 401(g) in his District Court filing.

The certified question process is based in this Court's Rule 19. Under that Rule, a District Court may "certify to this Court a question or proposition of law on which it seeks instruction for the proper decision of a case." The final part of the quoted portion makes clear that the "legitimacy of [the] process in a given case hinges on the fact that the question certified is part and parcel to [the] resolution of a controversy before the District Court." *Kirkman v. Nevada Highway Patrol*, 5 U. S. 62 (2018) (emphasis added). The case before the District Court in these proceedings, however, challenged only § 401(g) of the CAAA, not the entire Act. The scope of the challenge makes particular sense in light of the fact that plaintiff's injury, as explained earlier, is "fairly traceable to § 401(g)." Supra, at 4. It is uncertain whether, under the

Lujan framework, plaintiff would have standing to challenge other provisions of the CAAA in this case. And although *Lujan* may not necessarily prescribe a mechanical formula, see supra, at 2, it is an important guidepost nonetheless. In any event, plaintiff has not attempted to challenge any provision other than § 401(g) and we consider it prudent to limit the focus of our inquiry to that provision alone.

We therefore hold that it would be inappropriate under the circumstances to consider the validity of any provision other than § 401(g) in this case and dismiss the certified question except as to § 401(g) accordingly. We address that provision's constitutionality next.

II

Article III vests the judicial power of the United States "in one supreme Court, and in such inferior Courts as the Congress may from time to time establish." §1. Congress accordingly cannot "confer the Government's 'judicial Power' on entities outside Article III." *Stern v. Marshall*, 564 U. S. 462, 484 (2011). When "determining whether a proceeding involves an exercise of Article III judicial power, this Court's precedents have distinguished between 'public rights' and 'private rights.' " *Oil States Energy Services, LLC v. Greene's Energy Group, LLC*, 584 U. S. ___, ___ (2018) (slip op., at 6) (quoting *Executive Benefits Ins. Agency v. Arkison*, 573 U. S. ___, ___ (2014) (slip op., at 6)). Those precedents have given Congress "significant [though not unlimited] latitude to assign adjudication of public rights to entities other than Article III courts." Ibid. (citing Stern, supra, at 488–492).

The Government argues that "[federal public] labor com-plaints," such as those involving personnel actions de-scribed in the CAAA, "fall under [the public rights] doc-trine." Brief for United States 3. Accordingly, the

Government says, Congress may permissibly task an administrative agency with "handl[ing those types of] disputes" in the first instance, subject to judicial review. Ibid.

A

The public rights doctrine, subject to certain exceptions not relevant here, includes " 'only . . . matters arising between' individuals and the Government 'in connection with the performance of the constitutional functions of the executive or legislative departments . . . that historically could have been determined exclusively by those branches.' " Stern, supra, at 485 (quoting *Northern Pipeline Construc-tion Co. v. Marathon Pipe Line Co.*, 458 U. S. 50, 67–68 (1982)).

As we have noted in the past, the political branches have considerable leeway in determining the conditions of em-ployment for federal employees. *Garcetti v. Ceballos*, 547 U. S. 410, 418–419 (2006). Indeed, historically, it has been almost exclusively the role of the Executive Branch and Legislative Branch to determine what rights to afford employees. Subject only to restrictions imposed by the Constitution and Acts of Congress, see, e. g., *Connick v. Myers*, 461 U. S. 138, 142 (1983), employment in the Executive Branch is at-will. See also *Board of Regents of State Colleges v. Roth*, 408 U. S. 564 (1972); *Perry v. Sindermann*, 408 U. S. 593 (1972).

Thus, in general, labor complaints of the kind specified in the CAAA present issues of public rights.

B

This is not the end of the matter. While the public/private rights distinction is instructive, it is not dispositive. As we have emphasized before, "practical attention to substance rather than doctrinaire reliance on for-

mal categories should inform application of Article III." *Thomas v. Union Carbide Agricultural Products, Co.*, 473 U. S. 568, 587 (1985). Likewise, in *Commodity Futures Trading Comm'n v. Schor*, 478 U. S. 833 (1986), we expressly "declined to adopt for-malistic and unbending rules" for Article III. Id., at 851. Instead, we "weighed a number of factors, none of which has been deemed determinative, with an eye to the practical effect that the congressional action will have." Ibid. While the "origins . . . of the right to be adjudicated" are one factor, id., at 849, so is the "importance" of that right, ibid., as well as the "extent" of the non-Article III tribunal's powers, the presence or "absence of consent to an initial adjudication before a non-Article III tribunal," and the "concerns that drove Congress to depart from" adjudication in an Article III court. Id., at 849, 851.

Additionally, as the Court in *Schor* noted, while "the dan-ger of encroaching on the judicial power" is greater where "private rights" are involved, non-Article III adjudication of "public rights" cases may still be problematic. Id., at 853–854. We must look "beyond form to the substance of what [the law] accomplishes." THOMAS, J. supra, at 589. With these principles in mind, we consider the constitutionality of § 401(g).

1

We consider first the origins and importance of the rights whose adjudication the CAAA assigns to the NLA.

A

As we know, the majority of the rights at issue in this case are created by statute. Some do, however, originate from the Constitution. The calculus, naturally, is different for the two; Congress obviously has far greater leeway in as-signing first adjudication of a right arising under

one of its statutes to an agency than it does with a right arising under the Constitution. However, to simplify our analysis, and because it does not change our outcome, we will proceed un-der the assumption that all the rights which are implicated by § 401(g) originate from an Act of Congress.

B

We next must consider the importance of these rights. In doing so, we must remember to pay "practical attention to substance," with an eye to the "practical effect[s]" of the con-gressional action. Id., at 587; *Schor*, supra, at 851.

Undoubtedly, protections for federal employees are of great import in our society. In our Nation, virtually every working citizen is employed by the Federal Government, which stands as the number one employer. This unusual fact gives special significance to laws protecting public employees from arbitrary employer action. Without protections allowing public employees to speak freely without fear of retaliatory personnel action, the Nation as a whole would be deprived of open political discourse because almost the entirety of the voting population would be muzzled. This would give disproportionate power to the Executive Branch to influence the outcomes of elections; this includes both elections for President and for Congress. Protections which prevent such an outcome are clearly of the utmost importance in preserving our legitimate system of Government.

Other major interests are similarly advanced by laws protecting public employees. For instance, protections like whistle-blower protections actuate principles of Government accountability and transparency. If employees were left unprotected in the course of disclosing unethical conduct by superiors, then those top officials would be

able to abuse their powers with impunity. Additionally, the oversight responsibilities of Congress would be frustrated. These employee protections, thus, are closely tied to the principles of open and honest government. As a result, we must conclude that the rights involved here are of immense importance.

2

We must also consider the extent of the NLA's powers. Specifically, we are concerned with the "extent to which the [NLA] exercises the range of jurisdiction and powers normally vested only in Article III courts." Ibid. This analysis is driven by "due regard" for the "unique aspects of the congressional plan at issue and its practical consequences in light of the larger concerns that underlie Article III." Id., at 856–857.

The NLA has jurisdiction over a wide range of employer actions, as recounted above. Ante, at 3–4. These actions, described in the CAAA, touch on decisions by agency leaders as routine as decisions to call trainings, host mass patrols, inter alia; we emphasized the frequency of these decisions earlier in this opinion, noting that they were "daily . . . occurrences." Ante, at 3. The breadth of the jurisdiction given to the NLA is demonstrative of several things, but primarily: The NLA has extensive authority to resolve disputes between public employers and employees.

In addition to its expansive jurisdiction, the NLA also has significant power and considerable finality to its determinations. For instance, the NLA's factual findings, under the CAAA, are final. § 401(h) ("Orders and decisions made by the [NLA] appealed to Courts of the United States shall be judged solely on law"). Final authority to adjudicate facts is significant because in many cases facts are dispositive. In most employment cases, the law will be

clear-cut. The salient issue, then, will be whether the conduct of the employer fits the bill for what the law proscribes. In that process, the authority to make factual findings carries significant weight. If the NLA were determined to obstruct en-forcement of employee protections — and because the NLA is not secured from external influences through life tenure like judges are, this is a real possibility — it could by making errant factual findings which paint an inaccurate picture of what happened which reviewing courts would be bound to accept.

The NLA's legal conclusions, also, are only to be set aside, according to the CAAA, if the NLA's error is "egregious." § 401(h). In other words, the NLA's rulings are effectively final in most cases. But as we emphasized in THOMAS, Article III may require "eventual review in an Art. III court" "even" with respect to "the resolution of public rights disputes." THOMAS, supra, at 599. Moreover, it is principally the role of the Judiciary to "say what the law is." *Marbury v. Madison*, 1 *Cranch* 137, 177 (1803). Thus, by leaving such broad authority for the NLA to make final interpretations of the law, the CAAA impinges on one of the "larger concerns that underlie Article III." *Schor*, supra, at 857.

3

Next is the issue of consent. This is evidently a problem-atic area for § 401(g) since its entire effect is to mandate that all public employee litigants alleging violations of personnel law first bring their case to the NLA. No employee is given the option to first go to court. And as noted above, the decision of the NLA is, for all practical purposes, final. This further exacerbates the lack of consent. The effect of § 401(g) is to force litigants to bring their cases to an administrative body for effectively final resolution. There is no clearer example of a case of the Gov-

ernment attempting to shut the courthouse door to a class of litigants.

Given the sheer absence of consent characteristic of laws like § 401(g) which are designed, with no clear justification, to force litigants to present their cases to bureaucrats sub-ject to the whims of political officers, these laws are greatly problematic.

4

Lastly, we consider the concerns which drove Congress to opt to use a non-Article III tribunal. Id., at 851. There does not appear, however, to have been any concerns which ac-tually drove Congress to settle on a non-Article III tribunal. That Congress considered it a good idea is plainly insuffi-cient, in particular when the record suggests that the plan was adopted without any serious consideration.

C

Section 401(g) implicates immensely important rights; places exclusive jurisdiction over cases involving those rights, with respect to public employment decisions, in an administrative agency with expansive jurisdiction and whose decisions are effectively unreviewable; does so without regard for consent of litigants; and for apparently no real reason. This combination of facts leaves us no choice but to declare § 401(g) of the CAAA unconstitutional.

III

We also conclude that § 401(g) is unconstitutional for two additional independent reasons. First, we deem § 401(g) inconsistent with basic principles of justice, and second, we find that § 401(g) is plainly irrational under the circumstances.

A

It is a fundamental principle of law that courts have an inherent duty "to see that justice is done." *Joy, A Judge's Duty To Do Justice*, 46 Hof. L. Rev. 139, 140 (2017). This basic responsibility is reflected in the judicial oath of office, through which federal judges affirm their commitment to "administer[ing] justice." 28 U. S. C. § 453. A judge's duty to do justice is a creature of constitutional law, as basic principles of Article III illustrate. Indeed, the very vesting of the "judicial power" in the courts implies a responsibility to "promote the ends of justice." *Gitelson, The Affirmative Duty to Be an Instrumentality of Justice*, 7 Santa Clara L. Rev. 7, 9 (1966). Since the duty to do justice is a constitutional imperative, it follows that mere Acts of Congress cannot enjoin a judge to disregard his fundamental commitment as an Article III officer. Thus, laws affecting the Judiciary must be consistent with basic principles of justice. And since justice and reason are intertwined in profound and admittedly inextricable ways, a law affecting the Judiciary must be rationally justifiable under the circumstances.

After all, Congress may neither intentionally require the Judiciary to be complicit in perpetrating an injustice of procedure, nor may it do so through carelessness or by giving insufficient thought to the consequences of its decision. When Congress passes a law pertaining to judicial procedure with the purpose or effect of causing an injustice of sufficiently serious magnitude, it becomes the responsibility of the courts to invalidate it. Similarly, when Congress passes a law affecting judicial procedure which is utterly unjustifiable in any rational way, the courts have a duty to invalidate it.

B

As emphasized earlier, protections for public employees are uniquely important to our Nation because of the significance of public employment to our people. Ante, at 9–10. Congress, of course, is under no obligation to pass protections like these (setting aside constitutional protections for a moment). But having done so, Congress is severely limited in its ability to frustrate attempts by public employees to vindicate those rights through the judicial process. This is not an unusual state of affairs.

In numerous other contexts, our cases have recognized that when the government elects to grant a privilege to citizens, it may assume special limitations and responsibilities. See *DeShaney v. Winnebago County Dept. of Social Servs.*, 489 U. S. 189, 194 (1989); *Martinez v. California*, 444 U. S. 277, 285 (1980); *Bush v. Gore*, 531 U. S. 98, 104– 105 (2000); *Reynolds v. Sims*, 377 U. S. 533, 555 (1964); *Harper v. Virginia Bd. of Elections*, 383 U. S. 663, 665 (1996).

Our identification of the basic principles of justice which guide our analysis cannot be "reduced to any formula." *Poe v. Ullman*, 367 U. S. 497, 542 (1961) (HARLAN, J., dissenting). Rather, we must exercise our own reasoned judgment in discerning whether the strictures of the particular Act before us and its procedural demands on the Judiciary are consistent with principles of justice. We need not repeat our earlier analysis; for many of the reasons provided earlier, it is rather easy to say in this case that the demands of justice have not been met. Ante, at 8–12. For this reason, § 401(g) is unconstitutional.

C

It is equally clear that § 401(g) cannot be rationally justified under the circumstances. The obscurity of the system created by Congress in place of judicial adjudication of public employee labor complaints makes it such that public employees are widely unaware of how they must vindicate their rights. Rather than simply file a case through the usual channels, they must seek out a bureaucratic and detached element of the Executive Branch to which they must first make their appeal. They must do so despite no structured processes or procedures. If they are unaware of these requirements and file their case with a court initially, their case may be transferred without any notice to them. § 401(h). They may then lose track of their complaint or be unaware of how to proceed then on.

As we made clear earlier in this opinion, Congress' judgment is usually entitled to great respect; however, that is not the case when, as here, Congress' judgment was reached "without any serious consideration." Ante, at 12. Under these circumstances, it is appropriate for us to proceed without any presumption favoring retention of the law. Rather, we must objectively weigh the costs and benefits of the law and the interaction between — and the real effect of — its provisions in the first instance. Having conducted that analysis in this case, we deem § 401(g) irrational under the circumstances and thus an unconstitutional procedural mandate for the Judiciary.

* * *

Judging the constitutionality of an Act of Congress is this Court's "gravest and most delicate duty." *Blodgett* v. *Holden*, 275 U. S. 142, 147–148 (1927) (HOLMES, J., dissenting). The gravity of that duty underscores the need

for both discipline and restraint in its performance. But we must also be vigilant in not allowing "illegitimate and unconstitutional practices" to gain "their . . . footing." *Boyd* v. *United States*, 116 U. S. 616, 635 (1886). It is for that reason that we must now hold and declare § 401(g) unconstitutional and invalid on its face. As a result, the certified question is answered in the affirmative in part and dismissed in part.

It is so ordered.

JUSTICE GORSUCH and JUSTICE STEWART dissent from the judgment. JUSTICE KAVANAUGH, JUSTICE KENNEDY, and JUSTICE JACKSON took no part in the consideration or decision of this case.

FEDERAL ELECTION COMMISSION, ET AL.,
PETITIONERS v. ACIDRAPS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 05–77. Decided August 26, 2018.

PER CURIAM.

Presidential elections, to many, present a "hotbox of emotions." *Isner* v. *Federal Elections Comm'n*, 3 U. S. 87, 88 (2017) (Statement of SCALIA, J., respecting the denial of certiorari). Not only do they play a major role in shaping our Nation's present state, but they are of great help in molding its future as well.[1] In an election, there will be "winners and there [will be] losers — such is to be expected." *Ibid.* But it is critical in a democratic system that the choice of who's who lie with the People. See Art. II, § 1, cl. 2. Courts, for one, will not impede that choice.[2] And neither should election officials. Having said that much, we must keep closely in mind that courts, too, are bound by the law, cf. *Citizens United* v. *Federal Elections Comm'n*, 558 U. S. 310, 326 (2010), and when policing the boundaries of election officials, must take care to heed

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[1] A duly-elected President will perform many important functions. Inter alia, they will sign or veto legislation, appoint judges, fill Senate vacancies, direct our foreign affairs, and oversee the Executive Branch.

2 As a general matter, judicial policy strongly counsels against considering what we have termed "political questions." *Baker* v. *Carr*, 369 U. S. 186, 217 (1962); *Japan Whaling Assn.* v. *American Cetacean*, 478 U. S. 221, 229–230 (1986); *Elrod* v. *Burns*, 427 U. S. 347, 351–352 (1976); cf. *Nixon* v. *Herndon*, 273 U. S. 536, 540 (1927). See also *Trump* v. *Hawaii*, 585 U. S. ___, ___–___ (2018) (slip op., at 8–9) (discussing the relationship between a similar doctrine of justiciability and jurisdiction).

our own limitations. In *Technozo* v. *United States*, 6 U. S. ___, ___ (2018) (slip op., at 1), we held that "clan managers are immune from liability in federal court . . . when they act pursuant to their prescribed duties in an area traditionally within the group holder's control." There are thus two questions the District Court should have considered before reaching this case's merits. *First*, whether the Federal Election Commission (FEC) — a clan-manager entity, see U. S. Const. Art. I, § 4 — acted pursuant to its prescribed duties. *Next*, whether those duties fell within the group holder's traditional areas of responsibility. If the answer to both questions is "yes," then the District Court would have been required, as *Technozo* confirms, to find the FEC not liable and dismiss the case. We vacate the judgment below and remand for reconsideration in light of *Technozo* v. *United States*.

I

Some factual background should put this case into proper perspective.[3] AcidRaps, respondent here, was a candidate for President in the first 2018 Presidential Election. After registering in 2017, AcidRaps quickly became the favored candidate. But once incumbent President SheldonParty, together with former Vice President TimGeithner, an-nounced his plans to seek re-election, AcidRaps's campaign took a sudden turn as support quickly shifted from him to the then-President. As time went on, SheldonParty's cam-paign gained large leads in the polls, further frustrating supporters of respondent

[3] Our recitation of the facts in this case is based on a combination of common knowledge, the allegations in the record below, and other com-monsense inferences. If the District Court proceeds beyond the *Technozo* phase, it is free to engage in its own factfinding.

and perpetuating an exodus from his campaign. Later, however, an opportunity would pre-sent itself to respondent.

President SheldonParty and the United States had become entangled in an international conflict with North Korea. As war become an inevitability, the public remained divided on the issue. AcidRaps, some might say, saw it as an opportunity to recoup some of his losses in the polls and took a hard public stance against war with North Korea. In private, however, AcidRaps began communicating with the leader of North Korea, urging him to prolong the conflict so that he could use it for political gain.

When AcidRaps's communications with North Korea came to light (along with separate communications from his Vice Presidential candidate, who acted as a military advisor to North Korea), the FEC opened an investigation. Acting through its Federal Election Presidential Committee, the FEC heard testimony from both AcidRaps and the com-plainants against him. The FEC provided a fair oppor-tunity for AcidRaps to provide his side of the story and com-plied with the procedures set forth in its Campaign Policy booklet. Ultimately, finding that he had likely violated FEC regulation and federal law, the FEC disqualified AcidRaps. Months later, after the election was over, AcidRaps filed this lawsuit in the District Court seeking an injunction bar-ring the FEC from disqualifying candidates in future elec-tions. The District Court issued the injunction and the FEC appealed.

II

We would be remiss to say that the District Court did not attempt to consider the possibility of liability immunity in this case at all; in fact, it did. Its analysis, however,

was wrong on multiple counts. Two of those errors are glaring and bear mentioning.

A

The first error committed by the District Court was its treatment of JUSTICE SCALIA's statement in *Isner v. Federal Elections Comm'n*. The District Court is, of course, correct that the statement is not binding but not for the reason it seems to think. It is plainly wrong to suggest that opinions of this Court rendered under the previous Constitution ceased to have effect upon ratification of the current one. Only this Court may overturn its constitutional precedents. See *Agostini v. Felton*, 521 U. S. 203, 217 (1997). Moreover, it is not unusual for us to rely on precedents rendered under previous iterations of our *Constitution*, see, e. g., supra, at 1, n. 2 — they continue to have great weight. Their weight is only diminished by changes in the Constitution going directly to their underpinnings. The mere fact that we have a new Constitution would not justify abandoning, en masse, all prior precedents of this Court.

JUSTICE SCALIA's *Isner* statement is not binding for the entirely different reason that it was not a controlling opinion of the Court. JUSTICE SCALIA wrote for himself alone. But that does not mean that his opinion cannot be instructive in the District Court's analysis. The District Court could and should have taken it at face value and weighed the force of its argument in light of the applicable law (e. g., our opinions). After all, recognizing an opinion is not binding is not on its own a valid refutation of its argument. Accord, *Technozo v United States*, supra, at 5-17 (slip op., at 2–3) (addressing JUSTICE SCALIA's arguments in *Isner* as well as JUSTICE MARSHALL's in *Ex parte Sixman*, 5 U. S. 31, at 123 (2018)). Statements of individual Justices, though not binding, can be particularly helpful in discerning the law.

B

The District Court's next error was similar in nature. After finding itself not bound by JUSTICE SCALIA's statement in *Isner* and failing to consider his argument at face value, the District Court merely assumed that its analysis of potential liability-immunity issues was complete. But that logic is not sound. The District Court, despite finding an absence of controlling Supreme Court precedent directly addressing the question before it, should not have thrown its hands up and skipped it entirely. The proper course of action would have been to utilize our other immunity decisions and determine the extent to which their logic applied in this case in the first instance. In the alternative, the District Court could have certified the question to us for authoritative resolution and guidance. See this Court's Rule 19.

The District Court, if it had given due consideration to the question before it, may have arrived at the same test we did in *Technozo* — or perhaps a reasonable equivalent — and could have applied it to this case. It did not attempt any such analysis and therefore had no hope of reaching a correctly-reasoned conclusion.

III

On remand, the District Court should apply the test from *Technozo* to determine whether the FEC is entitled to liability immunity in this case. We think it appropriate in light of the circumstances to add some of our own observations in relation to the test's application here.

A

It appears to us plain that the actions challenged in this case (AcidRaps's disqualification) fall within the scope of the "prescribed duties," *Technozo*, 6 U. S., at ___ (slip op., at 1), of the FEC. The FEC is the clan-manager organ, organized by the group holder, expressly tasked with managing Presidential elections — it has done so for

years. The centrality of the FEC to election management in this country is further confirmed by the *Constitution's* express mention of it in Article I. The Constitution vests in the FEC the power to "make or alter" regulations for Congressional elections. Art. I, § 4; see *Sugarman v. Dougall*, 413 U. S. 634, 647 (1973). And our Nation has long understood that "as a practical matter, there must be . . . substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process." *Storer v. Brown*, 415 U. S. 724, 730 (1974) (emphasis added). Accordingly, we think it implied in the group holder's manifestations to the FEC that it is to exercise total regulation of presidential elections. Undoubtedly, that includes the duty to disqualify candidates who violate election regulations.

Our first impression is confirmed by another fact. Disqualification decisions by the FEC, according to its Campaign Policy booklet, are made with the "consent of the [group holder]." As a matter of agency law, this confirms for present purposes that the FEC's actions are in line with the manifestations of the group holder as they are expressly ratified by him.

B

It also seems clear to us that the duties being exercised by the FEC are within one of the group holder's traditional zones of responsibility. As we recognized directly in *Technozo*, "Presidential election management" is among the group holder's "traditional responsibilities." 6 U. S., at ___ (slip op., at 4). This recognition, we noted, is eminently "[s]upportable by history." Id., at ___ (slip op., at 8). We are also satisfied that there is a rational connection be-tween the disqualification of a rule-breaking candidate in a Presidential election and "Presidential election management."

Election management is a broad duty encompassing many sub-responsibilities. Election regulations generally cover many topics, including the "registration and qualifications of voters, the selection and eligibility of candidates, [and] the voting process itself." *Anderson v. Celebrezze*, 460 U. S. 780, 788 (1983) (emphasis added). Disqualifying candidates for rule violations falls precisely within the ambit of election management.

IV

Petitioner also asks us to address an alleged violation of the Court Proceedings Act (CPA) by the District Court. However, because we have alternative grounds, see supra, at 1–7, for awarding the exact same relief, we hold that it is appropriate to avoid considering the CPA claim in this case and thus decline to do so.

* * *

Where a matter of great public importance is involved, as is usually the case with suits about election law, there is often a great temptation to authoritatively decide the questions presented. But when we exercise the "judicial power," we "must put aside the natural urge to proceed directly to the merits of [an] important dispute and to 'settle' it for the sake of convenience and efficiency." *Raines v. Byrd*, 521 U. S. 811, 820 (1997) (footnote omitted). We must take care to comply with procedural requirements and address the antecedent questions, like those of liability immunity, at the beginning. Here, the District Court failed to adequately do that.

We grant the petition for a writ of certiorari, vacate the judgment below, and remand for reconsideration in light of *Technozo v. United States* and our observations above.

It is so ordered.

KIRKMAN v. BANK OF AMERICA, ET AL.

ON WRIT OF CERTIORARI BEFORE JUDGEMENT TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 06-20. Decided April 5, 2019.

Kirkman filed this action in the District Court against the Bank of Amer-ica. The Bank responded with a motion to dismiss with prejudice. The District Court granted the motion. Kirkman appealed to the Court of Appeals and filed a petition for writ of certiorari before judgment in this Court. This Court granted the petition due to unreasonable delay.

Held: The Enhancing the Judiciary Act sets forth the circumstances un-der which prejudice may be applied to a dismissal. This case does not meet the requirements for prejudice to be applied.

3:18–1015, reversed in part.

PITNEY, J., delivered the opinion of the Court, in which all other Members joined, except CHASE and DOUGLAS, JJ., who took no part in the consideration or decision of the case.

JUSTICE PITNEY delivered the opinion of the Court.

On the second of November, two thousand and eighteen, District Judge Conjman issued a dismissal with prejudice in the case of *Kirkman v. Bank of America*, 3:18–1015 (D. Nv. 2018). Statutory law, specifically the Enhancing the Judiciary Act of 2018, provides the applicable grounds for a case, whether civil or criminal, to be dismissed with prejudice by a Federal District Court. It states: "No case . . . shall be dismissed with prejudice unless the defendant has been put in jeopardy." It is the understanding of the Court that the statutory requirements to apply prejudice to this case were not fulfilled.

Therefore, the judgment of the District Court is reversed with regard to the application of prejudice in this case.

It is so ordered.

UNITED STATES, PETITIONER v. FISK_WILSON

ON WRIT OF CERTIORARI BEFORE JUDGEMENT TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 06-21. Decided April 5, 2019.

PER CURIAM.

After being charged with several criminal offenses by the Federal Government, respondent successfully convinced prosecutors to drop one of the charges. Respondent demanded that all other charges be dropped as a result, arguing that Federal Rule of Criminal Procedure 7(e) requires the full dismissal of a criminal information where at least one charge is dropped. The Court of Appeals rightly rejected this claim, but the United States argues that its reasoning went beyond the scope of the case and answered the question of if a criminal information could be amended to *add* an additional charge. The United States claims that the Court of Appeals' decision on the so-called "charge-adding" question was erroneous. However, regardless of how the charge-adding question should be answered on the merits, the United States lacks any basis to appeal. The Court of Appeals' answer to that question, if any was provided, is nothing more than non-binding dicta in an opinion sup-porting judgment favorable to the United States. The charge-adding question was not ruled on by the Court of Appeals.

As such, the writ of certiorari is dismissed.

It is so ordered.

ORDERS FOR AUGUST 14, 2018
THROUGH FEBRUARY 22, 2018

August 6, 2018

Certiorari Granted.

No. 05–72. ULTIMAN1 v. UNITED STATES. Certiorari granted.

August 6, 2018

Certiorari Denied.

No. 05–73. KING_FRUITS v. UNITED STATES. Certiorari denied.

August 11, 2018

Certiorari Granted.

No. 05–74. BENDA587 v. UNITED STATES. Certiorari granted.

August 13, 2018

Certiorari Granted.

No. 05–74. FEDERAL ELECTIONS COMMISSION, ET AL. v. ACIDRAPSS. Certiorari *granted*.

August 17, 2018

Certiorari Denied.

No. 05–74. HELOXUS VS. NATIONAL LABOR AUTHORITY. Certiorari denied.

August 20, 2018

Certiorari Granted.

No. 06–01. LORDIOUSHULAIOS v. UNITED STATES. Certiorari granted.

August 21, 2018

Dismissed.

No. 06–01. LordiousHulaios v. United States. Dismissed.

August 24, 2018

Certiorari Denied.

No. 06–02. conjman v. United States. Certiorari denied.

August 25, 2018

Dismissed.

No. 05–76. Offset v. District of Columbia. Dismissed.

September 9, 2018

Review Denied.

No. 06–04. HHPrinceGeorge vs. 32nd Amendment of the Constitution. Review denied.

September 15, 2018

Certiorari Denied.

No. 06–03. BernardCaldwell v. United States. Certiorari denied.

Justice White, concurring in the denial of review.

Some of my colleagues, almost reflexively, have voted to deny this petition. Maybe, for fear of public scrutiny, an unnerving sense of discomfort with the question, or even contempt for the petitioner. Who's to say? But I vote to deny for one distinct reason: Jurisdiction.

I

Petitioner raises a serious procedural concern about this Court's decision to pass and subsequently ratify the, then, proposed Thirty-Second Amendment. It is with great un-ease that I admit such concern is valid. Art. V, § 1 plainly states that

proposed amendments of effect to the "composition or operation of the judiciary" should be voted on by the judiciary, and amendments that do not should be voted by referendum. It is my belief that this Court overlooked that in its decision to vote on and ratify the Thirty-Second Amendment.

II

Though I believe we broke procedure by ratifying the amendment, I also believe this Court should, whenever it can, uphold the status quo, so not to disrupt what has been settled. Most recently, this Court has done so, in part, in similar matters like *Fruits v. United States*, 5 U. S 183 (2018) (cert. denied) and *George v. United States*, 6 U. S. ___ (2018) (cert. denied).

Since its ratification, the Thirty-Second Amendment has been utilized on more than one occasion, thus imbedding it into societal practice, which is something this Court, unless necessary, ought not disrupt. And while the People may not have voted on the amendment directly, they surely have through their elected officials. Who, notably, voted to pass the amendment unanimously in both Chambers of the Congress, which shows that this Court's ratification of the Amendment did not encroach upon the will of the People, rather that it upheld it. As such, the legitimacy of the Amendment remains intact.

III

Within this petition lies some merit. And I would have voted to hear it, if not for the Anytime Review Clause, which limits this Court's anytime review to actions of the legislative and executive branches. Petitioner asks of this Court to review a decision of its own. Clearly, not within the parameter of our limited power of review. Therefore, I concur in the Court's decision to deny this petition.

September 28, 2018

Remanded.

No. 06–05. CALDWELL V. RACINE. Remanded to Court of Appeals.

September 30, 2018

Certiorari Denied.

No. 06–06. XxCaptainGxX vs. Clan Manager Immunity. Certiorari denied.

October 2, 2018

Arrest on Sight Application Granted.

No. 06–07. United States v. Yada Clan. Application Granted.

Justice Kennedy delivered the opinion of the Court.

On October 2, 2018, this Court preliminarily granted the Government's application for a group-arrest warrant on the Yada Clan. Seventy-two hours later, the warrant lapsed. In response to the Government's motion to continue the warrant, the Court held a trial on October 5th. The question of whether to continue the warrant remained pending until now. After consideration, the Court now denies the Government's motion to continue the group-arrest warrant against the Yada Clan.

I

This case, like all others of its kind, is governed by the legal standard identified in In re United States, 5 U. S. 1 (2018) (joint opinion of Holmes, C. J., and Marshall and Gorsuch, JJ.). In that case, the Court reasoned that be-cause the group-arrest warrant mechanism "is a preventa-tive, not punitive, measure" which "is not intended to re-place criminal prosecution . . . on an individual basis," the Government's burden is to allege facts sufficient "to show a need for preventative relief." Id., at 1–2. Those facts, standing alone, "must adequately demonstrate that the actions of group members are not isolated incidents, but ra-ther part of some organized effort on the group's part to harm the peace of the United States." Id., at 2 (emphasis added).

At the trial phase, while deciding whether to continue the warrant, the Court hears the arguments of the respondent group and affords "the group the benefit of all inferences." Ibid.

The Government must provide "objective infor-mation," ibid., to rebut these inferences.

The Court has taken into consideration several factors when deciding whether to continue a warrant in the past. One such factor is the size of the group. *United States v. TPR*, 5 U. S. 36, 37 (2018). The size of the group plays a significant role because part of our task is to consider if "law enforcement" could feasibly "pursue the crimes committed by individuals of the amalgamation" without pursuing the "collective itself." Ibid. Therefore, in order to justify a group-arrest warrant, the Government must allege facts showing criminal activity and coordination by the group so pervasive that it negates the fact that the Government al-most always outnumbers criminal organizations.

Also relevant is the activity of the group. See id., at 39–41 (HOLMES, C. J., concurring). If the Government meets its burden of showing coordinated efforts on the group's part to harm the peace of the United States, how often the group acts becomes a critical point. The Government has no need for "preventative relief," *In re United States*, supra, at 2, if the group does not present a sustained threat. Groups which attack only sporadically do not present the conditions requisite to justify a group-arrest warrant.

II

The Government presented substantial evidence in the preliminary phase of these proceedings that members of the group commit crimes. At the trial, however, the Yada Clan asserted that "not all [group members]" are involved in criminal activities. Tr. of Oral Args. 8. Rather, "a lot of [group members] have [government] jobs" and serve in law enforcement capacities. The problem with a group-arrest warrant in this case, they say, is it provides no room for dis-tinguishing between Yada Clan members who are law-abid-ing and those who are career criminals.

On its own, however, the fact that some members of a group do not partake in criminal activities is not sufficient to prevent the issuance of a group-arrest warrant. The measure is preventative, not punitive. If a law-abiding citizen chooses to associate themselves with an organization avowedly dedicated to crime, they assume the risk of being subject to a group-arrest warrant

together with the other members of the group. They would also have the option of leaving the group.

This argument can only succeed if the group itself is not dedicated to crime, i. e., if the group is not designed for crim-inal purposes. A group which, for instance, was designed to advocate peacefully for some cause could not be considered a criminal organization merely because some of its mem-bers commit crime. Likewise, any other group which is or-ganized for non-criminal purposes, by definition, cannot be a criminal group so long as it is not used to organize or or-chestrate criminal activity.

For its part, the Yada Clan insists that it was formed as a "family." Id., at 11. In response to questioning, the Yada Clan also clarified that it was not formed as a "crime family" but instead as a community group, some members of which happen to be criminals. Ibid. Furthermore, the Yada Clan insists that, while there may be coordination between some of its members on criminal activity, that coordination takes place through separate channels and has nothing to do with the group itself. This argument raises several questions factually, but the Court must afford the group the benefit of inferences. The burden is on the Government to demon-strate that these facially plausible assertions by the Yada Clan are untrue.

The Government fails to meet this burden. It does not present any "objective information" to the Court to rebut the Yada Clan's claim that it is a "family" group, not a crime group. The Government's only arguments against this line of reasoning by the Yada Clan are admittedly strange.

First, the Government suggests that all members of the Yada Clan, regardless of the group's actual purpose, are somehow "guilty by association" because a large number of the group's members are criminals. Id., at 7. This argument is nothing more than circular reasoning. Under the Government's reasoning, many members of the group are criminals, therefore the remainder of the group are, by association, culpable as well, so the entire group is a criminal group. Accepting this argument would turn the Court's prior decisions in *In re United States* and TPR on their head. In those decisions, the Court specifical-

ly required a causal showing linking the group to harmful conduct, not a handful of its members. Under the relevant precedents, it must be established that the group to be sanctioned is, as an entity, carrying out an organized effort to harm the United States.

The Government's "guilt by association" argument also apparently extends beyond the members of the Yada Clan itself. The Government argued that anyone with even the name "Yada" was similarly tarred. See id., at 6–7. The Court cannot accept such a destructive and misguided ar-gument.

Second, the Government argues that the non-criminal members of the Yada Clan should be "punished for aiding terrorists in manpower." Id., at 6. This argument is wrong for many of the reasons the first is incorrect, but has an additional fatal flaw. The purpose of group-arrest warrants is not, contrary to the Government's argument to "punish." Ibid. If the Court's precedents on the subject make one thing unmistakably clear, it is that group-arrest warrants are preventative measures. They are not at all punitive. They are also not directed at individuals, but, by definition, at groups instead. A group simply cannot be defined by the actions of a few members: The Court's analysis must focus on the actual organizational use of the group.

Third, the Government relies on Congress' designation of the Yada Clan as a terrorist group to support its motion. But Congress' designation only matters to the extent Congress has attached sanctions to that designation. And Congress' power to attach sanctions is limited in important ways. The most significant is the Bill of Attainders Clause, see Art. I, § 9, cl. 2, which prevents Congress from directly imposing punishments on groups and individuals. Additionally, the "sole power to issue arrest [w]arrants on groups" lies with this Court. Art. III, § 5, cl. 3. Congress' designation of the Yada Clan has no bearing on this case.

* * *

Due to the lack of sufficient objective information rebutting the Yada Clan's argument that it is organized and operates as a "family" group, some members of which happen to commit crime, and the lack of any sufficient argument by the Govern-

ment offsetting that argument, the Court must assume it to be true for present purposes. On that record, it is readily concluded that the Government has not met its burden to obtain a continuance of the warrant.

The Court denies the Government's motion to continue the group-arrest warrant on the Yada Clan.

It is so ordered.

October 18, 2018

Remanded.

No. 06–08. devOmrgax v. GNC Bank. Remanded to District Court.

October 28, 2018

Certiorari Denied.

No. 06–09. RockkDove v. United States. Certiorari denied.

October 29, 2018

Expulsion.

No. 06–13. In re DavidGC890. Moot due to resignation.

No. 06–14. In re Danfly. dismissed.

November 4, 2018

Expulsion.

No. 06–12. In re DonaldJTrump. Judge Expelled from District Court.

November 17, 2018

Certiorari Denied.

No. 06–10. THEBLOXKILLER123 V. LORDSIGHTS. Certiorari denied.

No. 06–11. ROCKKDOVE V. UNITED STATES. Certiorari denied.

Review Denied.

No. 06–15. SIRNICHOLAS_II V. LORDSIGHTS. Review denied.

No. 06–16. SN0WBYTE V. UNITED STATES. Review denied.

December 2, 2018

Certiorari Denied.

No. 06–17. GUNLOW V. LORDSIGHTSS. Certiorari denied.

No. 06–18. PAULJKL VS. LORDSIGHTSS, SENATE, ET AL. Certiorari denied.

December 15, 2018

Remanded.

No. 06–19. CHIEFFX VS. VIOLATION OF FIRST AMENDMENT RIGHT BY MODERATOR AZAHID1 AGAINST STITCHMEOWSKYII. Remanded to District Court.

Certiorari Granted.

No. 06–20. KIRKMAN V. BANK OF AMERICA. Certiorari granted.

December 20, 2018

Certiorari Granted.

No. 06–21. UNITED STATES V. FISK_WILSON. Certiorari granted.

February 4, 2018

Certiorari Denied.

No. 06–22. FREONFREDDY VS. CONSTITUTION OF THE UNITED STATES. Certiorari *denied*.

Petition Withdrawn.

No. 06–23. WAFFLES8890 V. SENATE. Petition was withdrawn by petitioner.

February 8, 2018

Certiorari Denied.

No. 06–24. HENRYSALVO VS. POLICE BRUTALITY. Certiorari *denied*.

March 23, 2018

Certiorari Denied.

No. 06–25. AZURECANIST VS. DEPUTYTACTICALLAWS. Certiorari *denied*.

March 24, 2018

Petition Withdrawn.

No. 06–26. CITY OF LAS VEGAS V. NERMONILE. Petition was withdrawn by petitioner.

REPORTER'S NOTE

This Bound Volume is the work of David E. Racine, III. Its contents' formatting, pagination, and other revisions were completed by him, based on former Reporter of Decisions Timothy Geithner.
