Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

# SUPREME COURT OF THE UNITED STATES

Syllabus

## UNITED STATES *v.* TPR

APPLICATION FOR GROUP ARREST WARRANT

No. 05–22. Argued March 1, 2018—Decided April 6, 2018

On February 27, 2018, the Court granted an arrest warrant for the criminal street gang TPR at the Government's application. Soon after, a constitutionally-required trial took place. Upon completion, the Court conducted a vote on whether to extend the warrant beyond its 72-hour original time-frame.

*Held*: The warrant must not be extended beyond its 72-hour time frame. Pp. 1–2.

(a) There is very little precedent addressing the specific matter of group arrest warrants. The "lack of [outlined] procedure" has been an issue "since the Court's duty [over group arrest warrants] was first outlined in the Constitution." P. 1.

(b) The Court must exercise its discretion in deciding whether the specific facts support extending the warrant and should specifically consider real-world "necessity." Pp. 1–2.

(c) The size of a group is one of the factors which may be considered in the analysis of whether to continue the warrant. Pp. 1–2.

GINSBURG, J., delivered the opinion of the Court, in which HOLMES, C. J., MARSHALL, and O'CONNOR, JJ., joined. HOLMES, C. J., filed a concurring opinion. O'CONNOR, J., filed a concurring opinion, in which HOLMES, C. J., and MARSHALL, J., joined. THOMAS, J., filed a dissenting opinion, in which GORSUCH and BORK, JJ., joined.

# SUPREME COURT OF THE UNITED STATES

No. 05–22

UNITED STATES, PETITIONER *v.* TPR

ON APPLICATION FOR GROUP ARREST WARRANT

[April 6, 2018]

JUSTICE GINSBURG delivered the opinion of the Court.

*United States* v. *TPR*, 5 U.S. ___ (2018) brings forth a series of contemporary circumstances that have been recorded numerous times on paper—not once in a physical practice. The Court's preeminent proceedings respecting the warrant ordered on the 26th of February, 2018, are principally unique due to the absence of precedent within our court—a miscellany of cases never held. This lack of procedure has been overlooked since the Court's duty was first outlined in the Constitution, where the Court's authority to act upon the matter of a collective "group" arrest warrant (group AOS, AOS hereinafter) has rarely ever been questioned. The trial phase of the order in question established a "new" mode of procedure: the same, consistent pugnacious proceedings (with innumerable interjections by the Court), and the traditional hold-and-go refutation allowance. Throughout the defending counsel's arguments, one question was regularly prevalent: "Why is the necessity for the approval of a group AOS expected when there an overwhelming imbalance between two parties?" The (as a collective) law enforcement bodies have (roughly) a threefold advantage over a meager street-gang fueled only by notoriety, where the common federally-funded law enforcement agency (or department) will have two, perhaps three assault rifles, a taser, and have been militarized with other crime-preven-

tion equipment. Article III of the United States Constitution ensures no constraint for a trial concerning a group AOS, however, the United States is permitted to continue with the proceedings. Throughout the arguments, the preceding information has proven critical for fundamental contentious support, however, the texts are vague to a point of little clarity: What are the procedures for this practice? Is this case pursued ordinarily?

Law enforcement individuals should have easily been able to pursue the crimes committed by individuals of the amalgamation, not the collective itself. The warrant has no need to continue, as the organization is, and always has been outnumbered.

* * *

We therefore deny the Court's question of warrant continuance.

*It is so ordered*.

# SUPREME COURT OF THE UNITED STATES

No. 05–22

UNITED STATES, PETITIONER *v.* TPR

ON APPLICATION FOR GROUP ARREST WARRANT

[April 6, 2018]

CHIEF JUSTICE HOLMES, concurring.

I write briefly to respond to the dissenters.

*Legal Standard*

Despite JUSTICE THOMAS's fifteen pages of opinion, the legal standard required by the Constitution in group arrest warrant trials is actually quite clear. We have already held that what the Constitution requires is a weighing of "objective information." *In re United States Application for Arrest Warrant on TPR*, 5 U. S. ___, ___ (2018) (*TPR Application*) (unanimous concurring opinion) (slip op., at 2). We have also emphasized that the Government carries the burden of establishing the need for a warrant. See *ibid*. Moreover, because we err on the side of protecting associational liberty against potentially arbitrary Government impositions, we must "accord the [affected] group the benefit of all inferences." *Ibid*.

JUSTICE THOMAS would disregard those constitutional principles and instead apply Fourth Amendment *pretrial* standards to the group arrest warrant *trial* phase.[1]

[1] Our *TPR Application* decision makes clear that Article III is the appropriate law to apply to group arrest warrant proceedings. JUSTICE THOMAS's out-of-thin-air assertion that the Fourth Amendment is controlling makes little sense and is based entirely on a silent legislative record. Our decisions make clear though that "silence in the legislative

Namely, he wishes to require a mere showing of probable cause for the Government to be successful at trial. That suggestion contradicts his admonition that special rules cannot be made applicable to the group arrest warrant context. See *post*, at 5. If the same rules were applicable, then the Government's burden at a group arrest warrant trial would be "proof beyond a reasonable doubt" of the group's guilt of a crime as is the case in an individual criminal trial, not the lesser showing of probable cause JUSTICE THOMAS has selected. *In re Winship*, 397 U. S. 358, 364 (1970). The reasonable doubt standard, however, cannot be the correct standard. See generally *CodyGamer* v. *United States*, 2 U. S. 8 (2017) (holding that groups cannot be collectively responsible for a crime: individuals are). JUSTICE THOMAS, realizing he does not wish to embrace the logical conclusion of his original argument, then argues that "criminal-trial requirements" are not necessarily what would be applicable. (Why? Because JUSTICE THOMAS says so.) *Post*, at 11. We agree with him on that point: they are not. But it is odd for JUSTICE THOMAS, despite all his harping about there being "no distinction whatsoever" between the two contexts (group arrest warrant and individual arrest warrant), *post*, at 6, to turn around in the second half of his opinion and disavow his original premise in order to protect his hand-picked result against its many constitutional flaws. That exercise in gymnastics insults the intelligence of the reader.

JUSTICE THOMAS is correct in noting that the group arrest warrant provisions of Article III cannot be read in isolation. It is axiomatic that "proper interpretation of … the Constitution … requires paying attention to the whole." *British* v. *Ozzymen*, 3 U. S. 60, 76 (2017) (opinion of Scalia, J.) (inter-

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record, 'no matter how clanging,' cannot defeat … the text." *Encino Motorcars, LLC* v. *Navarro*, 584 U. S. ___, ___ (2018) (slip op., at 11) (quoting *Sedima, S. P. R. L.* v. *Imrex Co.*, 473 U. S. 479, 495, n. 13 (1985)).

nal quotation marks and citation omitted). But while JUSTICE THOMAS inexplicably consults the Fourth Amendment for ascertaining the standard to be applied at the trial phase, I look to more related clauses. The Venue Clause, for instance, provides that "the trial of all crimes … shall be held in a federal district court." Art. III, § 2, cl. 3. Because Article III also requires that *this Court* (not a district court) hold a trial for continuation of a group arrest warrant, it is obvious that the trial required is not a *criminal* trial. From there, we have found that group arrest warrants are necessarily preventative. *TPR Application*, *supra*, at ___ (slip op., at 1). That is, they are meant to aid the Government in preventing "organized effort[s] … to harm the peace of the United States." *Id.*, at ___–___ (slip op., at 1–2). If objective information does not support need for that type of relief, it must be refused as a matter of prudence and law.[2]

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[2] In responding to this conclusion, JUSTICE THOMAS's argument transforms from "somewhat engaging with the law," *post*., at 11, into hilariously self-defeating. Maintaining that probable cause is the correct standard to apply, JUSTICE THOMAS argues with a straight-face that limiting group arrest warrants to circumstances where objective evidence shows not only that a group *previously* organized crime, but that it continues to do so, and *will* continue to do so, and that the Government will need aid in stopping it—a standard he described in the beginning of his opinion as "an incredibly strict review," *post*, at 3—now is a threat to individual liberty because it allows "one [to] be arrested and detained not for committing a crime, but for the possibility of committing crime." *Post*, at 7. But probable cause is a lesser standard which requires only a relaxed form of the first showing which is required by *TPR Application* that I just described: that the group previously organized crime. Next.

JUSTICE THOMAS predicates his opposition to *TPR Application*'s finding that group arrest warrants are preventative (a finding Article III's Venue Clause compels) on the basis that it would mean that the "requirement of probable cause would make no sense." *Post*, at 6. But we have not asked for probable cause, we have asked for objective evidence. Group arrest warrants are not a substitute for criminal prosecution of individuals: they are solely for helping the Government deal with the problem of gang violence in a proactive way.

*Analysis of the Facts Here*

The Court's opinion and JUSTICE O'CONNOR's concurrence both provide excellent reasons, all things considered, for why the warrant should be declined. I offer two others.

First, during our consideration of this case, the President's chosen czar to coordinate the Executive Branch response to TPR (while he was still on the job) tweeted the following statement:

> Yet another successful two days of repelling TPRs raids. Pictures were taken from the responses last night (DHS/FPS, SWAT, FBI, NSA and SF) and from today (FBI, SWAT, SF, DHS, DOD and help from LVPD and EMS). **Attacks are becoming rarer** and **we are more prepared each time**. See Statement of SirReginaldII (2018), available at https://twitter.com/sirregii/status/970075389111357440 (emphasis added).

I'm not sure about JUSTICE THOMAS, but I would not say that the statements "[a]ttacks are becoming rarer" and "we are more prepared each time" really convey any urgent need for preventative relief. They also contradict his unsupported claim that TPR continues to turn cities into "warzones." *Post*, at 11.

The most recent evidence in the public record—the second reason for refusing extension of the warrant—however, confirms the need for refusing the Government's requested extension of the warrant: TPR was shut down. The group's description now reads, "Shut down by the Federal Government on April 1, 2018" and the group's only member is the White House Chief of Staff (who holds the group on the Government's behalf). See Appendix, *infra*.[3]

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[3] JUSTICE THOMAS criticizes me for considering TPR's shutdown in my opinion. That criticism is illogical. The standards we adopted in *TPR Application*—those the Constitution requires in the group arrest warrant

* * *

There is absolutely no reason to continue the arrest warrant against TPR. I join the Court's opinion and judgment.

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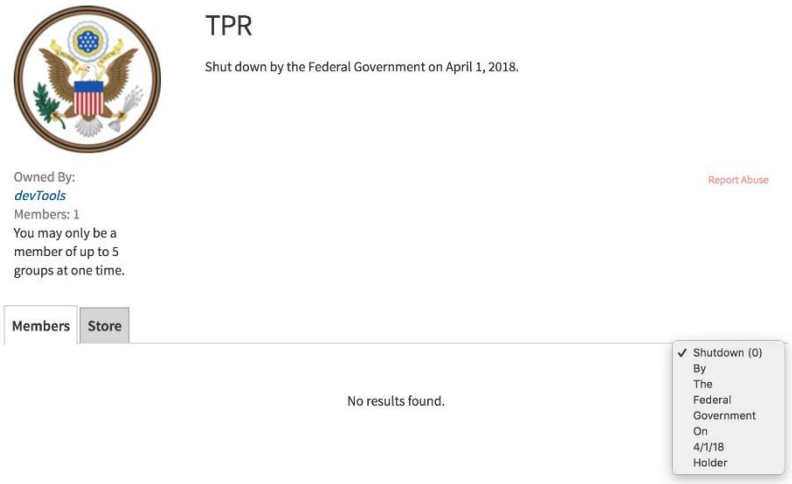
context—make clear that we must draw all inferences in the affected group's favor. Making an inference requires consideration of both "evidence" and "known facts." Merriam-Webster Dictionary (2018), available at https://www.merriam-webster.com/dictionary/inferences. In other words, the evidence submitted by the parties must be considered in light of general knowledge. TPR's shutdown was widely publicized and is thus general knowledge.

Utilizing all facts leading up to our final date of decision, April 6, 2018, does not make me a "time travel[er]." *Post*, at 10. It simply makes me prudent. JUSTICE THOMAS's suggestion that we decided this case against extending the warrant on March 1, 2018, see *post*, at 11, is just plain wrong. We concluded a *straw vote* on March 1st. Interestingly, the result of that vote was to *grant* that extension, not to deny it. The warrant was removed only because we did not reach a final decision within 72 hours from the warrant's issuance. Our final decision came on April 6th with the release of the opinions.

# APPENDIX




(Retrieved from https://twitter.com/realTimGeithner/status/980611049924767745)

# SUPREME COURT OF THE UNITED STATES

No. 05–22

UNITED STATES, PETITIONER *v.* TPR

ON APPLICATION FOR GROUP ARREST WARRANT

[April 6, 2018]

JUSTICE O'CONNOR, with whom THE CHIEF JUSTICE and JUSTICE MARSHALL join, concurring.

I join the opinion and judgment of the Court. I write separately here to express my doubts about the Government's position as to the facts surrounding the gang situation in which we find ourselves entangled. Customarily, warrants for arrest are issued by federal-court judges. Whether these are in accordance with an ongoing sentence or as punishment for a contempt of court, they have—outside of contempt proceedings—been only used on those who have been tried and convicted of a crime under our criminal justice system. Regardless the reason, they are issued to arrest individuals. The ability to take down organized crime, however, necessitates the existence of group arrest warrants, too. Recognizing such a warrant could be easily abused by lower courts, our Constitution's framers confined the power to issue group arrest warrants to the Supreme Court. By requiring our Court to be the only one capable of issuing these warrants, the Constitution ensures a safe process. It has not always been efficient; but it has always been fair.

The historical nature of issuing any group arrest warrant, though, should not be overlooked by this Court. It has been over a year since an arrest warrant for a group was issued; that is precisely because of the significance of doing so. Bold times demand bold action. Here, the United States asks this Court to extend its arrest warrant for the criminal gang

known as "TPR." TPR has, for the last two months, engaged in what can be accurately described as a total ground war against the United States at the city of Las Vegas. With its leaders' bloodlust growing, TPR soon moved beyond just drive-by shootings; it began to mechanically infiltrate federal agencies and departments. All in all, the Government's argument for an extension boils down to this: "Gang" violence must be stopped.

This leads to, what seems to me, an obvious question: Can a gang comprising 29 members (as is the case with TPR) really cause the Government—and the Nation—enough strife to warrant an extension on the warrant? The Government has yet to show sufficient evidence that such an environment exists. And upon further inspection the Government's position weakens even more. One need only look at our law-enforcement community. With 224 on-duty officers from the Federal Bureau of Investigation, Federal Protective Service, U.S. Marshals Service, Las Vegas Police Department, and the National Highway Patrol, one would think that forcing TPR to bear the brunt for their actions would be easier than the Government claims.

The Government can easily handle the threat of gang violence at American cities—just as it has done for years and will continue to do for all coming time. And the ground itself paints a far more peaceful picture than does the Government's telling of the facts; there has not been a coordinated attack on an American city by TPR for days. The White House, on March 14, 2018, returned Bank of America's Las Vegas location, seeming to suggest that the extenuating circumstances that warranted such an action have since decayed. See Natl. Security Presidential Memorandum No. 3 of President Geithner (2018).

Thus, if TPR truly is the threat the Government makes it out to be—if TPR really can continually best a police force that has it outnumbered by over 10 to 1—then I find it hard

to believe that there exists any solution to the problem. If 250 men and women armed with the weapons of the State cannot dispatch a band of rabble-rousers with glorified handguns, I doubt that an extended arrest warrant by this Court would be anything more than what was a Bill of Rights in Soviet-era Russia: a parchment guarantee.

# SUPREME COURT OF THE UNITED STATES

No. 05–22

UNITED STATES, PETITIONER *v.* TPR

ON APPLICATION FOR GROUP ARREST WARRANT

[April 6, 2018]

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

The Federal Government asks us to extend our warrant for the arrest of members of the most powerful and havoc-wreaking criminal organization in recent history known as "TPR." Faithful application of established precedents and common sense would have made this case easy to resolve. For reasons beyond me, however, the Court razes usage of both in opinions that, at best, represent interpretive hand-wringing and, at worst, an attitude so cavalier it ought to offend.

## I

The Fourth Amendment guarantees the right to be free from unreasonable government searches and seizures. In one way, it represents the right of a person to "retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman* v. *United States*, 365 U. S. 505, 511 (1961). In another, it reflects clearly that the Constitution neither tolerates nor allows for a police state to form. See generally, *e. g.*, *Davis* v. *United States*, 328 U. S. 582, 597 (1946) (Frankfurter, J., dissenting). Through this, the Fourth Amendment provides fundamentally important protections to the People.

One of those protections is the requirement of probable cause. Before the Government may arrest somebody or

search a home, they must—outside of, for example, exigent circumstances, see *Missouri* v. *McNeely*, 569 U. S. ___ (2013)—obtain a warrant from a lawful authority. To do this, probable cause must be demonstrated. We have previously defined probable cause to mean "where the facts and circumstances within [the Government's] knowledge, and of which they have reasonably trustworthy information, are sufficient in themselves to warrant a belief by a man of reasonable caution that a crime is being committed." *Brinegar* v. *United States*, 338 U. S. 160, 175 (1949) (citation omitted). In constitutional challenges against arrests, "[t]he test for probable cause is not reducible to 'precise definition or quantification,' " *Florida* v. *Harris*, 568 U. S. ___, ___ (2013) (slip op., at 5) (citing *Maryland* v. *Pringle*, 540 U. S. 366, 371 (2003)), for "[f]inely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence . . . have no place in the [probable-cause] decision." *Illinois* v. *Gates*, 462 U. S. 213, 235 (1983). Instead, we turn to the totality of the circumstances. See *Pringle*, 540 U. S., at 371; *Gates*, 462 U. S., at 232; *Brinegar*, 338 U. S., at 176. By going for an all-things-considered approach, we are able to balance the competing interests of efficiency and fairness. Thus, if probable cause is adequately demonstrated, a Court has no place issuing a judicial veto as it does today. The Constitution requires that *all* warrants—whether for searches and seizures, arrests, etc.—be backed by probable cause. See Amdt. 4.

There are, however, certain unique protections related to arrest warrants: charges must exist, Art. III, §5, cl. 1, be "actively pursued" by the Government within 72 hours upon a warrant's issuance, see cl. 2, and only the Supreme Court may issue arrest warrants to groups of individuals. See cl. 3. We have construed these portions of Article III to mean two things: (1) that issuing "charges" is synonymous with

demonstrating *some* form of need for the warrant,[1] with a more restrictive standard for group arrests, and (2) that "trial" means a judicial environment in which both the Government and the individual(s) accused may contest that showing of cause, with the onus of proving the Government wrong on the accused. See *In re United States Application for Arrest Warrant on TPR*, 5 U. S. ___, ___–___ (2018) (slip op., at 1–2) (joint concurring opinion).

All in all, the textual scheme of Article III in relation to the Fourth Amendment is simple. It reflects a check on the judiciary, members of which prior to the Constitution's ratification were able to routinely abuse the power of issuing arrest warrants. What it does not reflect, however, is the picture the majority and the concurring opinions paint: that to sustain a warrant to arrest a group of individuals, the Government must survive what can only be logically read to imply an incredibly strict review.[2] The majority's mistake is their emphasis not on the *process by which* an arrest warrant is to be obtained and (if needed) extended, but instead in whom the Constitution vests the power to issue the warrant in the first place. Respectfully, this is a strategical way of dodging what is staring us in the face, so we may then claim to be the saviors of liberty and due process, brag about it through judicial opinion, and continue on the next day as though nothing is wrong. When a Court of Eight—

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[1] I write, "*some* form of need," *supra* (emphasis present), because the Court describes "charges" to mean "factual allegations which tend to show the need for relief." *In re United States Application for Arrest Warrant on TPR*, 5 U. S. ___ (2018) (slip op., at 1) (joint concurring opinion); see *ante*, at 1 (majority opinion). This is nothing more than a disastrous restyling of an otherwise obvious clause. See *infra*, at 4–7.

[2] While the text of the majority's framework is not in and of itself strict, the fact that the Court rejects an extension of a group-arrest warrant for a gang as active, dangerous, and damaging as TPR is leads me to one conclusion (while implying it to future litigants before us): The Government will *never* satisfy the majority's framework's expectations.

comprising the top jurists of the Nation—cannot acknowledge the destruction caused by members of TPR, something is very wrong, and it shows to everyone but the majority.

## II

The Court not only misapplies the warrant provisions of Article III: It steps all over them. In reaching the conclusion to deny the Government's request for an extension of the warrant, it reasons that the text and history surrounding those provisions suggest a never-before-seen standard for group-arrest warrants. This departs from both what we know the text suggests and the history that surrounds it. Because the majority fails to take these factors into account, I shall do so for them.

### A

As we should always do when interpreting the Constitution, a statute, or a regulation, we begin with the text itself. There are two separate "additions" in Article III to the general warrant requirements housed within the Fourth Amendment. I have already demonstrated that these provisions—"charges" and a "trial" requirement—bear, as a matter of new precedent, synonymous meanings with some type of showing of need and a fair, judicial environment in which the merits of extending a warrant may be debated. The problem, however, with this reading is that it eviscerates the answer to what should be a very easy question to resolve.

The majority forgets that the Article III provisions relating to arrest warrants are *ancillary* to the Fourth Amendment, which governs all general warrants. The Court in holding and continuing to apply the decision that the Article III "charges"—and arrest warrants overall—demand a showing of need for preventative relief turns long-under-

stood notions of the warrant process and the Fourth Amendment on their heads, while also ignoring the very makeup of Article III. I fear that today, much like in *British2004* v. *Ozzymen*, 3 U. S. 60 (2018), the Court has yet again violated "an interpreter's ability to give uniform meaning across every word and clause of a law," *id.*, at 79 (opinion of Scalia, J.). It has been and continues to be my understanding that lawmakers try to avoid using words that "have no operation at all." *Marbury* v. *Madison*, 1 Cranch 137, 174 (1803); it hardly "require[s] a constitutional scholar," *Safford Unified School Dist.* v. *Redding*, 557 U.S. 364, 380 (2009), to realize such a truth.

The problem with the Court's analysis of "charges" is that it ignores, crucially so, that "charges" is used twice—both in the second and third clauses of section 5 of Article III. Understand, Article III simply prescribes a general process for arrest warrants and then, for group-arrest ones, confines that process to our Court. So it seems rather silly to me that the Court's basis for its reading of "charges" is the "context of group arrest warrant proceedings," *In re United States Application for Arrest Warrant on TPR*, 5 U. S., at ___ (slip op., at 1) (joint concurring opinion). Why note the context at all when the procedures are the exact same? This is the procedure for individual-arrest warrants: "a trial occurs within seventy two hours of the issuance of the Warrant and charges have been actively pursued . . . ." And then for group-arrest warrants: "a trial occurs within seventy two hours of the issuance of a Warrant and charges have activity been pursued . . . ." Without these obvious-to-everyone-but-the-majority facts resolved, the Court purports to rely on the straightforward meaning of "charges" to find its reading, but it would be more accurate to say that it does so by applying the appearance of a straightforward meaning of "charges."

I accept, though, that the meaning of "charges" is not necessarily plain. While judges should always to ordinary words apply their plain meaning, when doing so "would produce an absurd and arguably unconstitutional result," a Court is permitted to give an "unusual (though not unheard-of) meaning to a word," *United States* v. *X-Citement Video*, 513 U. S. 64, 82 (1994); see *Green* v. *Bock Laundry Machine Co.*, 490 U. S. 504, 527 (1989). The Court, however, relying on a non-existent context to define "charges," has declared that the group-arrest warrant is a preventative measure—they continue that today. That is fairly incongruous with the very *point* of a warrant for arrest as well as why we arrest in the first place.

In society, arrests are not made to prevent crime; they are made to detain for already committed actions and then—if convicted—punish the sentenced. The group-arrest warrant, therefore, is the same—just applied to a ROBLOX group of individuals rather than individuals themselves. And because we have already acknowledged that the Constitution makes no distinction whatsoever between individual and group-arrest warrants besides vesting the authority to issue them in two different original bodies, the substantive requirements for regular arrest warrants should logically apply to group-arrest ones, too. Nor is point of an arrest to prevent a crime; if that were the point, then the entire requirement of probable cause would make no sense, for it hinges on showing that illegal conduct *already happened* to justify the arrest, not on whether it *will* happen. And in circumstances where the arrest would be arresting for the *anticipation* of a crime, statutes fill the gaps. See, *e. g.*, 18 U. S. C. §371; 18 U. S. C. §1349. Regardless, even those are not truly preventative in the majority's sense of the word; the Government, to be given a warrant to arrest based on such a type of crime, would still have to show that the planning to commit a crime—the planning being a crime itself—

was *already committed*. Respectfully, the idea that warrants for arrest—and thus arrests themselves—have ever been preventative rather than to detain for crimes already completed turns the *entire* criminal justice system into nothing more than a system in which one may be arrested and detained not for committing crime, but for the possibility of committing crime. Such a system has its place in a banana republic, not the United States of America.

Given that these provisions merely are subsidiaries of the general warrant requirements of the Fourth Amendment, "charges" should, rather than require the Government to show a "need" for preventative relief (whatever that means), just mean what the word in *full* context naturally suggests: the Government must show probable cause to be granted an issuance of an arrest warrant—be it for an individual or for a group.

B

The Court can find no basis for its reading of "charges" in the text of the Constitution, nor can it in the history surrounding its text. These Article III provisions were not implemented to establish a procedure whose substantive components depart from the Fourth Amendment's requirements; they were implemented to require through more forceful writing what is generally required in real life. This corrective measure is one of many in the Constitution, written with the failings of the previous one fresh in the mind. Some are found in amendments; others in the original five Articles. The most obvious example of this would be the Eleventh Amendment, which constitutionalized the prohibition on employment in more than one civil office at once, while providing a simple procedure for how civil offices are to be defined—thereby avoiding the pitfall that I shall now describe.

A downfall of our virtual environment is that details often fall through the cracks in day-to-day work. For instance,

take a look at our very own Court. In real life, dozens of briefs fill individual cases, each full of elaborate legal arguments to which the Justices confine themselves when drafting their opinions; here, however, we often either (a) do not receive briefs or (b) receive them sparingly, and often they lack the elements that, well, would constitute them as proper legal "briefs." For us, the parties, and the thousands of Americans affected by our decisions, this shortfall does not present a concern worth stressing. But some process failures prove fatal. This cannot be demonstrated better than by looking to the history of arrest warrants in our country.

Before the present Constitution was ratified, there was no specific textual scheme outside of the general requirements of the Fourth Amendment to establish constitutional guarantees sufficient enough in light of the above-mentioned shortfall to ensure a fair process. Judges were not (and often still are not) capable of employing the proper legal methods used in real life on ROBLOX. That is so because, simply, most here are teenagers; they do not possess a law degree, nor do they study judicial opinions like some. They are, after all, here to have fun, so the, to many, tedious steps of the arrest-warrant process—from both the perspective of the Government and the courts—deterred their very operation.

Thus, instead of the Government going in front of a judge, showing probable cause, and the judge issuing an appropriate warrant for arrest, judges would instead issue *sua sponte* arrest warrants for individuals they thought were criminals or members of groups they thought constituted criminal enterprises. One need not think long and hard to come to the understanding that such a practice would be hit or miss—and the misses, given the very subject, always hit hardest those who deserve such beatings least. In light of this shortfall, the Constitution includes those Article III

provisions to *constitutionalize* those basic steps, not to create some new standard set apart from what is applied for all other warrant requests.

Concerning the group-arrest portion, there is one simple reason why the power to issue those types of warrants is vested solely in the Supreme Court: the history and struggles of the federal court worried the Constitution's drafters.[3] It was not to add a *third* (on top of an already unnecessarily added second) tier of scrutiny to the arrest-warrant process. One would think if that was the goal in mind, the text would reflect that instead of bearing the exact same wording as the preceding clause does.

## III

While I reject the Court's overall reading of the Article III provisions in tandem with the Fourth Amendment, I will, for the sake of argument, show that when applying the current circumstances of the case to its framework, there should have been no question as to whether the warrant should have been extended. I wish to, in doing this, note that it is at this point that the majority and those in concurrence take a turn from expounding bad to downright offensive law.

The Court's framework demands that the Government, in showing a need for preventative relief, demonstrate that the actions of a group's members are not merely coincidental, but deliberate, organized, and consistent. TPR's actions more than satisfy all three factors and then some. But in opinions and oral-argument transcripts reflecting truly how out of touch our Court is with the everyday American—and what will look like almost deliberate ignorance to readers—the Court, in putting out the candle, sends a much

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[3] By vesting it in the Supreme Court, the Constitution requires group-arrest warrants to have the assent of a majority of this Court, rather than individual judges at the federal-court level. Art. III, §5, cl. 3.

more worrying sentiment: It might just not care. We Justices spend almost all of our time in Discord-based chatrooms and using word-processor applications. We do not see the things regular Americans do at our cities. We do not bear the brunt of TPR's actions; everyday Americans do. This backwards ruling puts on bright display why we ought to get out of the business entirely of arbitrarily judging whether a crime is severe enough to warrant an arrest. That has never been the question (until now). We arrest those who commit crimes because they committed crimes; we thus ask the Government to show that there was probable cause to believe that they were committed.

## IV

I also write to respond first to THE CHIEF JUSTICE's discovery of time travel, and second to JUSTICE O'CONNOR's newfound expertise on criminal-organization strategy.

### A

THE CHIEF JUSTICE's concurrence gives one prevailing reason why the majority's opinion is correct: "the legal standard required by the Constitution in group arrest warrant trials ['charges' require a showing of preventative need] is quite clear." *Ante*, at 1 (CHIEF JUSTICE HOLMES, concurring). According to THE CHIEF JUSTICE, however, the reason for this is that the Court proclaimed it to be so. *Ante*, at 1 (citing *In re United States Application for Arrest Warrant on TPR*, 5 U. S.). The problem with that is the Court's justification then for its reading was as empty as THE CHIEF JUSTICE's is now. If the test applied to our precedents' validity is to ascertain their mere existence, rather than their contents' validity, then there is no test applied at all. Moreover, it is worth nothing that, of course, the Government "carries the burden of establishing the need for a warrant." *Ibid*. But what exactly that burden entails is probable

cause, see *supra*, at 4–9, not a showing that a group of individuals is dangerous enough to scare Members of this Court stiff.

THE CHIEF JUSTICE then says that unless the majority's reading is accepted, then criminal-trial requirements and standards would have to apply to the process of procuring a warrant. See *ante*, at 2 (quoting *In re Winship*, 397 U. S. 358, 364 (1970)). This is hard to follow, given that the avenue that the text naturally suggests would require a showing of probable cause, not need for preventative relief based on level of danger. Wherever THE CHIEF JUSTICE found this assertion, it was certainly incorrect.

THE CHIEF JUSTICE devotes the remainder of the page to arguing why trials of Article III are not criminal. I apologize to this Court's printing staff; your ink was wasted. Neither this dissent nor the Court's opinion asserts that they are criminal and require criminal elements of procedure. Where disagreement is found is at the point of deciding what is required *at* the "trial" phase.

At this point, THE CHIEF JUSTICE's concurrence evolves from somewhat engaging with law into travelling into the future. Before I explain, I wish to remind readers that this case is about deciding whether the arrest warrant granted for TPR should be extended. The Court, siding with TPR, ruled against the Government, and denied the extension on March 1, 2018. Thus, the relevant law and record to this case is what existed up to that moment. THE CHIEF JUSTICE, however, discards that established-for-centuries judicial rule. He says that the denial of the warrant extension was justified because TPR, on April 1, 2018, was shut down by the Government, so *ipso facto* the extension denial was based on good law. *Ante*, at 2–3. I was unaware that TPR had been shut down when we sat for oral argument in this matter on March 27, 2018; or that good news of a recent-but-not-final win against a grouped enemy, *ibid.*, was the

equivalent of an all-out victory worthy of celebration. And these two reasons proposed still rest on the faulty assumption that arrests are made to prevent crime rather than to detain for crime committed either for the duration of a trial or for imprisonment. The very test of deciding how dangerous a group is, and how dangerous need be "dangerous," inherently disregards the very purpose and meaning of warrants and the Fourth Amendment. But regardless of how misguided the legal theory espoused by THE CHIEF JUSTICE's concurrence may be, it pales in comparison to that of JUSTICE O'CONNOR's.

B

Much of what JUSTICE O'CONNOR writes is a broad (but curiously short) rejection of the Government's assertions as to the criminal conduct and nature of TPR's members and actions.

JUSTICE O'CONNOR begins with a titillating explanation of what exactly arrest warrants are in the first place.[4] Then, recognizing that a group-arrest warrant has

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[4] JUSTICE O'CONNOR writes, "warrants for arrest . . . have . . . been only used on those who have been tried and convicted of a crime under our criminal justice system." *Ante*, at 1. The problem with such a definition is that arrest warrants are issued before the trying and conviction of a defendant—issuing a warrant for the arrest of someone only after trying them seems to beg the question: How is one to compel attendance to court? JUSTICE O'CONNOR sprinkles in a contempt-citation exemption in her definition, yet this, too, makes little sense; how is one to get to the stage where a contempt citation would even arise if one cannot arrest the offender to bring him to be tried in the first place? Perhaps, I might dare surmise, JUSTICE O'CONNOR has confused "arrest"—which is reasonably defined as, "[t]o deprive a person of his liberty by legal authority . . . for the purpose of holding or detaining him to *answer a criminal charge or civil demand*," Black's Law Dictionary 100 (8th ed. 2004)—with "serving out a prison sentence," where defendants who have been found guilty by a jury of their peers and have been sentenced fairly under the law by a judge are incarcerated in a federal-prison center.

not been issued in nearly a year, see *ante*, at 1–2, JUSTICE O'CONNOR decides that was because such an issuance would require "significan[t]" circumstances." JUSTICE O'CONNOR and I agree: Significant circumstances would seem to correlate with and cause the need for a group-arrest warrant. JUSTICE O'CONNOR acknowledges this much, writing: "Bold times demand bold action." *Ante*, at 2. (Not too bold an action, however.)

JUSTICE O'CONNOR, attempting to faithfully apply the Court's erred framework, subjects the Government's argument to her very nuanced test: comparing the number of federal and municipal law-enforcement agents with TPR's member count. See *ibid.* I am no statistician, but I think it is safe to say there are some missing factors in JUSTICE O'CONNOR's analysis.

JUSTICE O'CONNOR mistakenly assumes personnel count to be the sole and final determinate factor in resolving questions like this. The argument that the higher count of heads will predict the battle has been historically, professionally, and logically rejected—but apparently not by JUSTICE O'CONNOR. JUSTICE O'CONNOR, marching forward, puts on her lack-of-awareness hat in then stating (without even a modicum of evidence or a citation to such), to further back her erroneous conclusion, that there must be no conflict because "there has not been a coordinated attack on an American city by TPR for days." *Ibid.* I am sure that a few strolls on the streets of Las Vegas would change JUSTICE O'CONNOR's outlook; any seriously proposed idea that the attacks have stopped should concern more than surprise, for they lack even the thinnest façade of an honest and competent analysis—legal or otherwise.

But even that is not what is most offensive about JUSTICE O'CONNOR's assumptions. JUSTICE O'CONNOR makes the argument, *ante*, at 3, that if the Government cannot handle TPR as it currently functions, then a group-arrest warrant

would serve no purpose—it would amount to nothing more than a "parchment guarantee" against an unbeatable enemy. *Ibid*. JUSTICE O'CONNOR believes the Government has *not* shown that the circumstances surrounding TPR necessitate a group-arrest warrant. This, however, is a fairly mystifying argument, for one then would wonder how JUSTICE O'CONNOR believes the Government *should* be dispatching with society's criminals if JUSTICE O'CONNOR at the same time would deny the Government the ability to *arrest* and *detain* those individuals under a warrant; JUSTICE O'CONNOR, I presume, must instead think that turning cities into first-person-shooter warzones is how crime is fought efficiently and safely, and that warrantless arrests will ink the remaining dry spots. Except this ignores—while again exposing the majority's troubled logic—the fact that arrests are made *after* crimes are committed. Had JUSTICE O'CONNOR and the rest of the majority understood that warrants for arrest are not preventative measures—no one arrest warrant is—but tools for dealing with crime and detaining and trying criminals, perhaps such a concurrence that insults hundreds of law-abiding citizens would not have been written.

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No single word summarizes the Fourth Amendment better than does "reasonableness." That is because principles governing procedure and substance in criminal justice require it. But reasonableness has been thrown out the window in now two cases establishing what is none other than a very troubling trend line. By turning Article III's bolded guarantees of the rights already afforded within the Fourth Amendment into an unrecognizable, tiered, and confusing system imposed through judicial fiat, the Court has taken the side of neither society nor criminals. Today, the Court—with THE CHIEF JUSTICE's and JUSTICE O'CONNOR's helping hands—sides with itself, placing with a wildly out-of-

touch perspective a new doctrine that has no textual, historical, or logical support from the Constitution above that of the safety of law-abiding citizens.

I respectfully dissent.