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

TECHNOZO *v.* UNITED STATES

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

No. 05–64. Argued August ——, 2018—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. ___, 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 traditional 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

Syllabus

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.

SUPREME COURT OF THE UNITED STATES

No. 05–64

TECHNOZO, PETITIONER *v.* UNITED STATES

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

[August 25, 2018]

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 invocation 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. ___, ___ (2018) (MARSHALL, 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. ___, ___–___ (2018) (slip op., at 1–2); *id.*, at ___ (BORK, J., concurring in judgment) (slip op., at 1); *George* v. *United States*, 5 U. S. ___, ___ (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 MARSHALL, 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 author-

ity' 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 MARSHALL'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 website-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 therefore 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 typically 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 "invade 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. Commonsense 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 extend 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.

SUPREME COURT OF THE UNITED STATES

No. 05–64

TECHNOZO, PETITIONER *v.* UNITED STATES

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

[August 25, 2018]

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 promotes the evenhanded, 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 experience 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 conclusion 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. *Shearson/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 previous 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.