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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

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JERMAN v. CARLISLE, MCNELLIE, RINI, KRAMER & ULRICH LPA ET AL.

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

No. 08–1200. Argued January 13, 2010—Decided April 21, 2010

The Fair Debt Collection Practices Act (FDCPA), 15 U. S. C. §1692 et seq., imposes civil liability on "debt collector[s]" for certain prohibited debt collection practices. A debt collector who "fails to comply with any [FDCPA] provision ... with respect to any person is liable to such person" for "actual damage[s]," costs, "a reasonable attorney's fee as determined by the court," and statutory "additional damages." §1692k(a). In addition, violations of the FDCPA are deemed unfair or deceptive acts or practices under the Federal Trade Commission Act (FTC Act), §41 et seq., which is enforced by the Federal Trade Commission (FTC). See §1692l. A debt collector who acts with "actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is [prohibited under the FDCPA]" is subject to civil penalties enforced by the FTC. §§45(m)(1)(A), (C). A debt collector is not liable in any action brought under the FDCPA, however, if it "shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." §1692k(c).

Respondents, a law firm and one of its attorneys (collectively Carlisle), filed a lawsuit in Ohio state court on behalf of a mortgage company to foreclose a mortgage on real property owned by petitioner Jerman. The complaint included a notice that the mortgage debt would be assumed valid unless Jerman disputed it in writing. Jerman's lawyer sent a letter disputing the debt, and, when the mortgage company acknowledged that the debt had in fact been paid, Carlisle withdrew the suit. Jerman then filed this action, contending that by sending the notice requiring her to dispute the debt in writ-

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ing, Carlisle had violated §1692g(a) of the FDCPA, which governs the contents of notices to debtors. The District Court, acknowledging a division of authority on the question, held that Carlisle had violated §1692g(a) but ultimately granted Carlisle summary judgment under §1692k(c)'s "bona fide error" defense. The Sixth Circuit affirmed, holding that the defense in §1692k(c) is not limited to clerical or factual errors, but extends to mistakes of law.

Held: The bona fide error defense in §1692k(c) does not apply to a violation resulting from a debt collector's mistaken interpretation of the legal requirements of the FDCPA. Pp. 6–30.

- (a) A violation resulting from a debt collector's misinterpretation of the legal requirements of the FDCPA cannot be "not intentional" under §1692k(c). It is a common maxim that "ignorance of the law will not excuse any person, either civilly or criminally." Barlow v. United States, 7 Pet. 404, 411. When Congress has intended to provide a mistake-of-law defense to civil liability, it has often done so more explicitly than here. In particular, the administrative-penalty provisions of the FTC Act, which are expressly incorporated into the FDCPA, apply only when a debt collector acts with "actual knowledge" or knowledge fairly implied on the basis of objective circumstances" that the FDCPA prohibited its action. §§45(m)(1)(A), (C). Given the absence of similar language in §1692k(c), it is fair to infer that Congress permitted injured consumers to recover damages for "intentional" conduct, including violations resulting from a mistaken interpretation of the FDCPA, while reserving the more onerous administrative penalties for debt collectors whose intentional actions reflected knowledge that the conduct was prohibited. Congress also did not confine FDCPA liability to "willful" violations, a term more often understood in the civil context to exclude mistakes of law. See, e.g., Trans World Airlines, Inc. v. Thurston, 469 U.S. 111, 125-126. Section 1692k(c)'s requirement that a debt collector maintain "procedures reasonably adapted to avoid any such error" also more naturally evokes procedures to avoid mistakes like clerical or factual errors. Pp. 6-12.
- (b) Additional support for this reading is found in the statute's context and history. The FDCPA's separate protection from liability for "any act done or omitted in good faith in conformity with any [FTC] advisory opinion," §1692k(e), is more obviously tailored to the concern at issue (excusing civil liability when the FDCPA's prohibitions are uncertain) than the bona fide error defense. Moreover, in enacting the FDCPA in 1977, Congress copied the pertinent portions of the bona fide error defense from the Truth in Lending Act (TILA), §1640(c). At that time, the three Federal Courts of Appeals to have considered the question interpreted the TILA provision as referring

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to clerical errors, and there is no reason to suppose Congress disagreed with those interpretations when it incorporated TILA's language into the FDCPA. Although in 1980 Congress amended the defense in TILA, but not in the FDCPA, to exclude errors of legal judgment, it is not obvious that amendment changed the scope of the TILA defense in a way material here, given the prior uniform judicial interpretation of that provision. It is also unclear why Congress would have intended the FDCPA's defense to be broader than TILA's, and Congress has not expressly *included* mistakes of law in any of the parallel bona fide error defenses elsewhere in the U. S. Code. Carlisle's reading is not supported by *Heintz* v. *Jenkins*, 514 U. S. 291, 292, which had no occasion to address the overall scope of the FDCPA bona fide error defense, and which did not depend on the premise that a misinterpretation of the requirements of the FDCPA would fall under that provision. Pp. 13–22.

(c) Today's decision does not place unmanageable burdens on debtcollecting lawyers. The FDCPA contains several provisions expressly guarding against abusive lawsuits, and gives courts discretion in calculating additional damages and attorney's fees. Lawyers have recourse to the bona fide error defense in §1692k(c) when a violation results from a qualifying factual error. To the extent the FDCPA imposes some constraints on a lawyer's advocacy on behalf of a client, it is not unique; lawyers have a duty, for instance, to comply with the law and standards of professional conduct. Numerous state consumer protection and debt collection statutes contain bona fide error defenses that are either silent as to, or expressly exclude, legal errors. To the extent lawyers face liability for mistaken interpretations of the FDCPA, Carlisle and its *amici* have not shown that "the result [will be] so absurd as to warrant" disregarding the weight of textual authority. Heintz, supra, at 295. Absent such a showing, arguments that the FDCPA strikes an undesirable balance in assigning the risks of legal misinterpretation are properly addressed to Congress. Pp. 22–30.

538 F. 3d 469, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, THOMAS, GINSBURG, and BREYER, JJ., joined. BREYER, J., filed a concurring opinion. SCALIA, J., filed an opinion concurring in part and concurring in the judgment. KENNEDY, J., filed a dissenting opinion, in which ALITO, J., joined.