United States v. Gonzales

No. 95-1605

Argued December 11, 1996

Decided March 3, 1997

520 U.S. 1

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

Syllabus

All three respondents were convicted in New Mexico courts and sentenced to prison terms on state charges arising from the use of guns by two of them to hold up undercover officers during a drug sting operation. After they began to serve their state sentences, respondents were convicted on various drug and related federal charges connected to the sting operation, and of using firearms during those crimes in violation of 18 U.S.C. § 924(c). In ordering their imprisonment, the District Court directed that the portion of their federal sentences attributable to the drug convictions run concurrently with their state sentences, with the remaining 60-month sentences required by § 924(c) to run consecutively to both. Among other rulings, the Tenth Circuit vacated the firearms sentences on the ground that they should have run concurrently with the state prison terms. The court found § 924(c)'s language to be ambiguous, resorted to the legislative history, and held that a § 924(c) sentence may run concurrently with a previously imposed, already operational state sentence, but not with another federal sentence.

Held: Section § 924(c)'s plain language -- *i.e.,* "the sentence . . . under this subsection [shall not] run concurrently with *any other term of imprisonment*" (emphasis added) -- forbids a federal district court to direct that the section's mandatory 5-year firearms sentence run concurrently with any other prison term, whether state or federal. Read naturally, the section's word "any" has an expansive meaning that is not limited to federal sentences, and so must be interpreted as referring to all "term[s] [520 U.S. 2] of imprisonment," including those imposed by state courts. *Cf., e.g., United States v. Alvarez-Sanchez,* 511 U.S. 350, 358. Unlike the Tenth Circuit, this Court sees nothing remarkable (much less ambiguous) about Congress' decision, in drafting § 924(c), to prohibit concurrent sentences instead of simply mandating consecutive ones. Moreover, given the straightforward statutory command, there is no reason to resort to legislative history. *Connecticut Nat. Bank v. Germain,* 503 U.S. 249, 254. Indeed, the legislative history excerpt relied upon by the Tenth Circuit only muddies the waters. Contrary to that court's interpretation, § 924(c)'s prohibition applies only

to the section's mandatory firearms sentence, and does not limit a district court's normal authority under § 3584(a) to order that other federal sentences run concurrently with or consecutively to other state or federal prison terms. Pp. 4-11.

65 F.3d 814, vacated and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and SCALIA, KENNEDY, SOUTER, THOMAS, and GINSBURG, JJ., joined. STEVENS, J., filed a dissenting opinion, in which BREYER, J., joined, *post,* p. 12. BREYER, J., filed a dissenting opinion, in which STEVENS, J., joined, *post,* p. 14.

O'CONNOR, J., lead opinion

JUSTICE O'CONNOR delivered the opinion of the Court.

We are asked to decide whether a federal court may direct that a prison sentence under 18 U.S.C. § 924(c) run concurrently with a state-imposed sentence, even though § 924(c) **[520 U.S. 3]** provides that a sentence imposed under that statute "shall [not] . . . run concurrently with any other term of imprisonment." We hold that it may not.

I

Respondents were arrested in a drug sting operation during which two of them pulled guns on undercover police officers. All three were convicted in New Mexico courts on charges arising from the hold-up. The state courts sentenced them to prison terms ranging from 13 to 17 years. After they began to serve their state sentences, respondents were convicted in federal court of committing various drug offenses connected to the sting operation, and conspiring to do so, in violation of 21 U.S.C. §§ 841 and 846. They were also convicted of using firearms during and in relation to those drug trafficking crimes, in violation of 18 U.S.C. § 924(c). Respondents received sentences ranging from 120 to 147 months in prison, of which 60 months reflected the mandatory sentence required for their firearms convictions. Pursuant to § 924(c), the District Court ordered that the portion of respondents' federal sentences attributable to the drug convictions run concurrently with their state sentences, with the remaining 60 months due to the firearms offenses to run consecutively to both.

The Court of Appeals for the Tenth Circuit vacated respondents' sentences for the firearms violations on the ground that the § 924(c) sentences should have run concurrently with the state prison terms. 65 F.3d 814 (1995). (The court also vacated the respondents' substantive drug convictions and dealt with various other sentencing issues not before us.) Although the Court of Appeals recognized that other circuits had uniformly "held that § 924(c)'s plain language prohibits sentences imposed under that statute from running concurrently with state sentences," it nevertheless thought that "a literal reading of the statutory language would produce an absurd result." *Id.* at 819. Feeling **[520 U.S. 4]** obliged to "venture into the thicket of legislative history," *id.* at 820 (citations and internal

quotation marks omitted), the court found a line in a Senate Committee Report indicating that

> "the mandatory sentence under the revised subsection 924(c) [should] be served prior to the start of the sentence for the underlying or any other offense,"

ibid. (quoting S.Rep. No. 98-225, pp. 313-314 (1983) (hereinafter S.Rep.)) (emphasis deleted). If this statement were applied literally, respondents would have to serve *first* their state sentences, *then* their 5-year federal firearm sentences, and *finally* the sentences for their narcotics convictions -- even though the narcotics sentences normally would have run concurrently with the state sentences, since they all arose out of the same criminal activity. 65 F.3d at 821. To avoid this irrational result, the court held that

> § 924(c)'s mandatory five-year sentence may run concurrently with a previously imposed *state* sentence that a defendant *has already begun to serve.*

Id. at 819.

We granted certiorari, 518 U.S. 1003, and now reverse.

II

Our analysis begins, as always, with the statutory text. Section 924(c)(1) provides:

> Whoever, during and in relation to any . . . drug trafficking crime . . . for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime . . . , be sentenced to imprisonment for five years. . . . Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with *any other term of imprisonment* including that imposed for the . . . drug trafficking crime in which the firearm was used or carried.

18 U.S.C. § 924(c)(1) (emphasis added). **[520 U.S. 5]** The question we face is whether the phrase "any other term of imprisonment" "means what it says, or whether it should be limited to some subset" of prison sentences, *Maine v. Thiboutot,* 448 U.S. 1, 4 (1980) -- namely, only federal sentences. Read naturally, the word "any" has an expansive meaning, that is, "one or some indiscriminately of whatever kind." Webster's Third New International Dictionary 97 (1976). Congress did not add any language limiting the breadth of that word, and so we must read § 924(c) as referring to all "term[s] of imprisonment," including those imposed by state courts. *Cf. United States v. Alvarez-Sanchez,* 511 U.S. 350, 358 (1994) (noting that statute referring to "any law enforcement officer" includes "federal, state, or local" officers); *Collector v. Hubbard,* 12 Wall. 1, 15 (1871) (stating "it is quite clear" that a statute prohibiting the filing of suit "in any court" "includes the State courts as well as the Federal courts," because "there is not a word in the [statute] tending to show that the words `in any court' are not used in

their ordinary sense"). There is no basis in the text for limiting § 924(c) to federal sentences.

In his dissenting opinion, JUSTICE STEVENS suggests that the word "any" as used in the first sentence of § 924(c) "unquestionably has the meaning `any federal.'" *Post* at 14. In that first sentence, however, Congress *explicitly* limited the scope of the phrase "any crime of violence or drug trafficking crime" to those "for which [a defendant] may be prosecuted in a court of the United States." Given that Congress expressly limited the phrase "any crime" to only federal crimes, we find it significant that no similar restriction modifies the phrase "any other term of imprisonment," which appears only two sentences later and is at issue in this case. *See Russello v. United States,* 464 U.S. 16, 23 (1983) ("`Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion'"). **[520 U.S. 6]**

The Court of Appeals also found ambiguity in Congress' decision, in drafting § 924(c), to prohibit concurrent sentences instead of simply mandating consecutive sentences. 65 F.3d at 820. Unlike the lower court, however, we see nothing remarkable (much less ambiguous) about Congress' choice of words. Because consecutive and concurrent sentences are exact opposites, Congress implicitly required one when it prohibited the other. This "ambiguity" is, in any event, beside the point, because this phraseology has no bearing on whether Congress meant § 924(c) sentences to run consecutively only to other federal terms of imprisonment.

Given the straightforward statutory command, there is no reason to resort to legislative history. *Connecticut Nat. Bank v. Germain,* 503 U.S. 249, 254 (1992). Indeed, far from clarifying the statute, the legislative history only muddies the waters. The excerpt from the Senate Report accompanying the 1984 amendment to § 924(c), relied upon by the Court of Appeals, reads:

> [T]he Committee intends that the mandatory sentence under the revised subsection 924(c) be served prior to the start of the sentence for the underlying or any other offense.

S.Rep. at 313-314. This snippet of legislative history injects into § 924(c) an entirely new idea -- that a defendant must serve the five-year prison term for his firearms conviction before any other sentences. This added requirement, however, is "in no way anchored in the text of the statute." *Shannon v. United States,* 512 U.S. 573, 583 (1994).

The Court of Appeals was troubled that this rule might lead to irrational results. Normally, a district court has authority to decide whether federal prison terms should run concurrently with or consecutively to other prison sentences. 18 U.S.C. § 3584(a) (vesting power in district court to run most prison terms either concurrently or consecutively); United States Sentencing Commission, Guidelines Manual **[520 U.S. 7]** § 5G1.3 (Nov. 1995) (USSG) (guiding court's discretion under

§ 3584(a)). If the prison terms for respondents' other federal sentences could not begin until after their § 924(c) terms were completed, however, the district court would effectively be stripped of its statutory power to decide whether the sentences for the underlying narcotics offenses should run concurrently with respondents' state terms of imprisonment. 65 F.3d at 822. The court observed that such a rule could lead to dramatically higher sentences, particularly for the respondents in this case. Perez, for example, is already serving a 17-year state prison term for his role in the hold-up. Normally, his 7.25-year federal sentence for narcotics possession would run concurrently with that state term under USSG § 5G1.3(b); his 5-year firearm sentence under § 924(c) would follow both, for a total of 22 years in prison. If he must serve his federal narcotics sentence *after* his 5-year firearms sentence, however, he would face a total of 29.25 years in prison. 65 F.3d at 821.

Seeking to avoid this conflict between § 924(c) (as reinterpreted in light of its legislative history) and § 3584(a), the Court of Appeals held that § 924(c) only prohibited running *federal* terms of imprisonment concurrently. *Ibid.* It also reasoned that such a narrow reading was necessary because

> there is no way in which a later-sentencing federal court can cause the mandatory 5-year § 924(c) sentence to be served before a state sentence that is already being served.

Ibid.

We see three flaws in this reasoning. First, the statutory texts of §§ 924(c) and 3584(a), unvarnished by legislative history, are entirely consistent. Section 924(c) specifies only that a court must not run a *firearms* sentence concurrently with other prison terms. It leaves plenty of room for a court to run *other* sentences -- whether for state or federal offenses -- concurrently with one another pursuant to § 3584(a) and USSG § 5G1.3. The statutes clash only if we engraft onto § 924(c) a requirement found only in a single [520 U.S. 8] sentence buried in the legislative history: that the firearms sentence must run first. We therefore follow the text, rather than the legislative history, of § 924(c). By disregarding the suggestion that a district court must specify that a sentence for a firearms conviction be served before other sentences, we give full meaning to the texts of both §§ 924(c) and 3584(a). *See United States v. Wiltberger,* 5 Wheat. 76, 95-96 (1820) (Marshall, C.J.) ("Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one indeed, which would justify a court in departing from the plain meaning of words . . . in search of an intention which the words themselves did not suggest"). Second, even if we ignored the plain language of § 924(c) and required courts to list the order in which a defendant must serve the sentences for different convictions, we would thereby create a rule that is superfluous in light of 18 U.S.C. § 3584(c). That statute instructs the Bureau of Prisons to treat multiple terms of imprisonment, whether imposed concurrently or consecutively, "for administrative purposes as a single, aggregate term of imprisonment." *Ibid.* As a practical matter, then, it makes no difference whether a court specifies the sequence in which each portion of an

aggregate sentence must be served. We will not impose on sentencing courts new duties that, in view of other statutory commands, will be effectively meaningless.

Third, the Court of Appeals' solution -- to allow § 924(c) prison terms to run concurrently with state sentences -- does not eliminate any anomaly that arises when a firearms sentence must run "first." Although it is clear that a prison term under § 924(c) cannot possibly run before an earlier-imposed *state* prison term, the same holds true when a prisoner is already serving a *federal* sentence. *See* § 3585(a) (providing that a federal prison term commences when the defendant is received into custody or voluntarily arrives to begin serving the sentence). Because it is impossible to start a **[520 U.S. 9]** § 924(c) sentence before *any* prison term that the prisoner is already serving, whether imposed by a state or federal court, limiting the phrase "any other term of imprisonment" to state sentences does not get rid of the problem. Thus, we think that the Court of Appeals both invented the problem and devised the wrong solution.

JUSTICE BREYER questions, in dissent, whether Congress wanted to impose a § 924(c) sentence on a defendant who is already serving a prison term pursuant to a virtually identical state sentencing enhancement statute. *Post* at 15. A federal court could not (for double jeopardy reasons) sentence a person to two consecutive federal prison terms for a single violation of a federal criminal statute, such as § 924(c). If Congress cannot impose two consecutive federal § 924(c) sentences, the dissent argues, it is unlikely that Congress would have wanted to stack a § 924(c) sentence onto a prison term under a virtually identical state firearms enhancement. *Ibid.*

As we have already observed, however, the straightforward language of § 924(c) leaves no room to speculate about congressional intent. *See supra* at 4-5. The statute speaks of "any term of imprisonment," without limitation, and there is no intimation that Congress meant § 924(c) sentences to run consecutively only to certain types of prison terms. District courts have some discretion under the Sentencing Guidelines, of course, in cases where related offenses are prosecuted in multiple proceedings, to establish sentences

> with an eye toward having such punishments approximate the total penalty that would have been imposed had the sentences for the different offenses been imposed at the same time. . . .

Witte v. United States, 515 U.S. 389, 404 (1995) (discussing USSG § 5G1.3). *See post* at 14-15 (BREYER, J., dissenting). When Congress enacted § 924(c)'s consecutive sentencing provision, however, it cabined the sentencing discretion of district courts in a single circumstance: when a defendant violates § 924(c), his sentencing enhancement **[520 U.S. 10]** under that statute must run consecutively to all other prison terms. Given this clear legislative directive, it is not for the courts to carve out statutory exceptions based on judicial perceptions of good sentencing policy.

Other language in § 924(c) reinforces our conclusion. In 1984, Congress amended § 924(c) so that its sentencing enhancement would apply regardless of

whether the underlying felony statute "provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device." Comprehensive Crime Control Act of 1984, Pub. L. 98-473, § 1005(a), 98 Stat. 2138-2139. Congress thus repudiated the result we reached in *Busic v. United States,* 446 U.S. 398 (1980), in which we held that

> prosecution and enhanced sentencing under § 924(c) is simply not permissible where the predicate felony statute contains its own enhancement provision,

irrespective of whether the Government had actually sought an enhancement under that predicate statute. *Id.* at 404; *see also Simpson v. United States,* 435 U.S. 6, 15 (1978) (holding that a federal court may not impose sentences under both § 924(c) and the weapon enhancement under the armed bank robbery statute, 18 U.S.C. § 2113, based on a single criminal transaction). Our holdings in these cases were based on our conclusion that the unamended text of § 924(c) left us with little "more than a guess" as to how Congress meant to mesh that statute with the sentencing enhancement provisions scattered throughout the federal criminal code. *Simpson, supra* at 15; *Busic, supra* at 405. The 1984 amendment, however, eliminated these ambiguities. At that point, Congress made clear its desire to run § 924(c) enhancements consecutively to all other prison terms, regardless of whether they were imposed under firearms enhancement statutes similar to § 924(c). We therefore cannot agree with JUSTICE BREYER's contention that our interpretation of § 924(c) distinguishes between "those subject to undischarged state, and those subject to undischarged [520 U.S. 11] federal, sentences." *Post* at 16. Both sorts of defendants face sentences for their other convictions that run concurrently with or consecutively to each other according to normal sentencing principles, plus an enhancement under § 924(c). In short, in light of the 1984 amendment, we think that Congress has foreclosed the dissent's argument that § 924(c) covers only federal sentences.

Finally, we pause to comment on JUSTICE STEVENS' concern over how today's decision might affect other cases where "the state trial follows the federal trial and the state judge imposes a concurrent sentence" that might be viewed as inconsistent with § 924(c). *Post* at 12. That, of course, was not the sequence in which the respondents were sentenced in this case, and so we have no occasion to decide whether a later-sentencing state court is bound to order its sentence to run consecutively to the § 924(c) term of imprisonment. *See ibid.* All that is before us today is the authority of a later-sentencing federal court to impose a consecutive sentence under § 924(c). We are hesitant to reach beyond the facts of this case to decide a question that is not squarely presented for our review.

III

In sum, we hold that the plain language of 18 U.S.C. § 924(c) forbids a federal district court to direct that a term of imprisonment under that statute run concurrently with any other term of imprisonment, whether state or federal. The statute does not, however, limit the court's authority to order that other federal sentences run

concurrently with or consecutively to other prison terms -- state or federal -- under § 3584.

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

It is so ordered. [520 U.S. 12]

STEVENS, J., dissenting

JUSTICE STEVENS, with whom JUSTICE BREYER joins, dissenting.

These cases arose out of a criminal enterprise that violated both New Mexico law and federal law and gave rise to both state and federal prosecutions. They raise a narrow but important question concerning the scope of the prohibition against concurrent sentences contained in 18 U.S.C. § 924(c)(1). As the Government reads that provision, it prohibits the § 924(c) sentence from running concurrently with a state sentence that has already been imposed, but permits concurrent state and federal sentences when the federal prosecution precedes the state prosecution.{GO>1} Thus, the length of the total term of imprisonment -- including both the state sentence and the federal sentence -- is determined, in part, by the happenstance of which case is tried first.

Read literally, however, the text of § 924(c)(1) would avoid this anomalous result. Because the text broadly prohibits the § 924(c) sentence from running "concurrently with any other term of imprisonment" regardless of whether that other term is imposed before or after the federal sentence, if the statute is read literally, it would require state judges to make any state term of imprisonment run consecutively to the § 924(c) sentence. Alternatively, if the state trial follows the federal trial and the state judge imposes a concurrent sentence (because she does not read § 924(c) as having any applicability to state sentences), the literal text would require the federal authorities to suspend the § 924(c) sentence until the state sentence has been served.

By relying so heavily on pure textual analysis, the Court's opinion would appear to dictate this result. Like the Government, however, I do not think the statute can reasonably be interpreted as containing any command to state sentencing judges or as requiring the suspension of any federal sentences when concurrent state sentences are later imposed. [520 U.S. 13] Thus, common sense requires us to reject a purely literal reading of the text. The question that then arises is which is the better of two plausible nonliteral readings. Should the term "any other term of imprisonment" be narrowed by reading it to cover only "any other term of imprisonment *that has already been imposed,*" as the Government argues, or "any other *federal* term of imprisonment," as the respondent contends?

For three reasons, I think it more likely that Congress intended the latter interpretation. First, it borders on the irrational to assume that Congress would actually intend the severity of the defendant's punishment in a case of this

kind to turn on the happenstance of whether the state or the federal prosecution was concluded first. The defendant's reading of the statute avoids that anomaly. Second, when § 924(c) was amended in 1970 to prohibit concurrent sentences, *see* Title II, Omnibus Crime Control Act of 1970, 84 Stat. 1889, this prohibition applied only to the federal sentence imposed for the underlying offense. When Congress amended the statute in 1984 to broaden the prohibition beyond the underlying offense, it said nothing about state sentences; if Congress had intended the amendment to apply to state as well as federal sentences, I think there would have been some mention of this important change in the legislative history.{GO>2} Furthermore, the 1984 amendment was part of a general revision of sentencing laws that sought to achieve more uniformity and predictability in federal sentencing. *See* Sentencing Reform Act of 1984, 98 Stat. 1987, 18 U.S.C. § 3551 *et seq.* The anomaly that the Government's reading of § 924(c) authorizes is inconsistent with the basic uniformity theme of the 1984 legislation. Finally, the context **[520 U.S. 14]** in which the relevant language appears is concerned entirely with federal sentencing. Indeed, the word "any" as used earlier in the section unquestionably has the meaning "any federal."{GO>3}

Given the Government's recognition of the fact that a completely literal reading of § 924(c)(1) is untenable, and the further fact that the Court offers nothing more than the dictionary definition of the word "any" to support its result, I think the wiser course is to interpret that word in the prohibition against concurrent sentences as having the same meaning as when the same word is first used in the statute.

Accordingly, I respectfully dissent.

BREYER, J., dissenting

JUSTICE BREYER, with whom JUSTICE STEVENS joins, dissenting.

I believe that JUSTICE STEVENS is right. Section 924(c) concerns federal, not state, sentences. Hence, Congress intended the words "other term of imprisonment" to refer to other federal, not other state, "terms." With respect to undischarged state sentences, therefore, 18 U.S.C. § 924(c) is permissive, not mandatory. That is, it permits the federal sentencing judge to make a § 924(c) sentence and an undischarged state sentence concurrent.

Quite often it will make little difference that, in this state/federal circumstance, the consecutive/concurrent decision is permissive, not mandatory. That is because federal sentencing judges, understanding that § 924 requires consecutive sentencing where undischarged federal sentences are at issue, would normally treat undischarged state sentences the same way. They would make the § 924(c) sentence consecutive **[520 U.S. 15]** to undischarged state sentences (even though § 924(c) would not force that result) in order to avoid treating similarly situated offenders differently. United States Sentencing Commission, Guidelines Manual § 5G1.3 (Nov. 1995). Ordinarily, the fact that the State, rather than the

Federal Government, imposed an undischarged sentence is irrelevant in terms of any sentencing objective.

In at least one circumstance, however, federal sentencing judges would probably not treat an undischarged state sentence as if it were federal. That is where the undischarged state sentence is a sentence under a state statute that itself *simply mimics § 924(c).* Such a situation cannot arise where the initial undischarged sentence is federal. Indeed, the Constitution would forbid any effort to apply § 924(c) twice to a single instance of gun possession. *Brown v. Ohio,* 432 U.S. 161, 165 (1977). But a State might have its own version of § 924(c), and a federal § 924(c) offender could be subject to an undischarged term of imprisonment imposed under such a statute. To run a § 924(c) sentence consecutively in such an instance (even if constitutionally permissible, *cf. Abbate v. United States,* 359 U.S. 187 (1959); *Heath v. Alabama,* 474 U.S. 82 (1985)), would treat the state offender differently, and far more harshly, than any possible federal counterpart.

I am not inventing a purely hypothetical possibility. The State, in the very case before us, has punished the petitioners, in part, pursuant to a mandatory state sentence enhancement statute that has no counterpart in federal law but for § 924(c) itself, which the state statute, N.M.Stat.Ann. § 31-18-16(A) (Supp. 1994), very much resembles. *But cf. Witte v. United States,* 515 U.S. 389, 398-404 (1995). I understand that Congress wanted to guarantee that § 924(c)'s sentence would amount to an additional sentence. But I do not see why Congress would have wanted to pile Pelion on Ossa in this way, adding the § 924(c) sentence to another sentence that does the identical thing. Nor do I believe that **[520 U.S. 16]** Congress would have intended potentially to create this kind of harsh distinction between those subject to undischarged state, and those subject to undischarged federal, sentences -- a likely practical result of the majority's holding. *See id. supra* at 404-406.

This reason, along with those that JUSTICE STEVENS has discussed, makes me think that Congress did intend § 924(c) to refer to federal sentences alone, and lead me to dissent in this close case.

Footnotes

STEVENS, J., dissenting (Footnotes)

1. Reply Brief for United States 10-11; Tr. of Oral Arg. 6-10.

2.

In a case where the construction of legislative language such as this makes so sweeping and so relatively unorthodox a change as that made here, I think judges, as well as detectives, may take into consideration the fact that a watchdog did not bark in the night.

Harrison v. PPG Industries, Inc., 446 U.S. 578, 602 (1980) (REHNQUIST, J. dissenting).

3. In the first sentence of § 924(c)(1), the word "any" is expressly confined to federal prosecutions. When the word is used a second time to describe "any other provision of law," it is again quite obvious that it embraces only other provisions of federal law, even though that limitation is implicit, rather than explicit. Nowhere in § 924(c) is there any explicit reference to state law or state sentences.

United States v. Alvarez-Sanchez

No. 92-1812

Argued March 1, 1994

Decided May 2, 1994

511 U.S. 350

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Syllabus

Nearly three days after local law enforcement officers arrested respondent on state narcotics charges, and while he was still in the custody of those officers, respondent confessed to United States Secret Service agents that he knew that Federal Reserve Notes the local officers had discovered while searching his home were counterfeit. The agents arrested him for possessing counterfeit currency and presented him on a federal complaint the following day. The Federal District Court refused to suppress the confession, rejecting, *inter alia,* respondent's argument that the delay between his arrest on state charges and his presentment on the federal charge rendered the confession inadmissible under 18 U.S.C. § 3501(c), which provides that a confession made while a defendant is "under arrest or other detention in the custody of any law enforcement officer or law enforcement agency, shall not be inadmissible solely because of delay in bringing such person before [a judicial officer] empowered to commit persons charged with offenses against the laws of the United States" if the confession was made voluntarily and "within six hours" following the arrest or other detention. Respondent was convicted. In vacating the conviction, the Court of Appeals

reasoned that, by negative implication, § 3501(c) permits suppression in cases where a confession is made outside the subsection's 6-hour post-arrest safe harbor period. The court concluded that § 3501(c) applied to respondent's statement because respondent was in custody and had not been presented to a magistrate at the time he confessed, and held that the confession should have been suppressed.

Held: Section 3501(c) does not apply to statements made by a person who is being held solely on state charges. Pp. 355-360.

(a) The subsection's text clearly indicates that its terms were never triggered in this case. Respondent errs in suggesting that, because the statute refers to a person in the custody of "any" law enforcement officer or agency, the 6-hour time period begins to run whenever a person is arrested by local, state, or federal officers. The subsection can apply only when there is some "delay" in presenting a person to a federal judicial officer. Because the term delay presumes an obligation to act, there can be no "delay" in bringing a person before a federal judicial officer until there is some obligation to do so in the first place. Such a [511 U.S. 351] duty does not arise until the person is arrested or detained for a federal crime. Although a person arrested on a federal charge by any officer- local, state, or federal-is under "arrest or other detention" for the purposes of § 3501(c) and its safe harbor period, one arrested on state charges is not. This is true even if the arresting officers believe or have cause to believe that federal law also has been violated, because such a belief does not alter the underlying basis for the arrest and subsequent custody. Pp. 355-358.

(b) Respondent was under arrest on state charges when he made his inculpatory statement to the Secret Service agents. Section 3501(c)'s terms thus did not come into play until he was arrested on a federal charge-after he made the statement. That he was never arraigned or prosecuted on the state charges does not alter this conclusion. Finally, there is no need to consider the situation that would arise if state or local authorities and federal officers act in collusion to obtain a confession in violation of a defendant's right to a prompt federal presentment, because in this case there was no such collusive arrangement, only routine cooperation between law enforcement agencies. Pp. 359-360.

975 F.2d 1396, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and BLACKMUN, O'CONNOR, SCALIA, KENNEDY, SOUTER, and GINSBURG, JJ., joined. GINSBURG, J., filed a concurring opinion, in which BLACKMUN, J., joined, *post,* p. 361. Stevens, J., filed an opinion concurring in the judgment, *post,* p. 361.

THOMAS, J., lead opinion

JUSTICE THOMAS delivered the opinion of the Court.

This case concerns the scope of 18 U.S.C. § 3501, the statute governing the admissibility of confessions in federal prosecutions. Respondent contends that § 3501(c), which provides that a custodial confession made by a person within six hours following his arrest "shall not be inadmissible solely because of delay in bringing such person" before a [511 U.S. 352] federal magistrate, rendered inadmissible the custodial statement he made more than six hours after his arrest on state criminal charges. We conclude, however, that § 3501(c) does not apply to statements made by a person who is being held solely on state charges. Accordingly, we reverse the judgment of the Court of Appeals.

I

On Friday, August 5, 1988, officers of the Los Angeles Sheriff's Department obtained a warrant to search respondent's residence for heroin and other evidence of narcotics distribution. While executing the warrant later that day, the officers discovered not only narcotics, but $2,260 in counterfeit Federal Reserve Notes. Respondent was arrested and booked on state felony narcotics charges at approximately 5:40 p.m. He spent the weekend in custody.

On Monday morning, August 8, the Sheriff's Department informed the United States Secret Service of the counterfeit currency found in respondent's residence. Two Secret Service agents arrived at the Sheriff's Department shortly before midday to take possession of the currency and to interview respondent. Using a deputy sheriff as an interpreter, the agents informed respondent of his rights under *Miranda v. Arizona,* 384 U.S. 436 (1966). After waiving these rights, respondent admitted that he had known that the currency was counterfeit. The agents arrested respondent shortly thereafter, took him to the Secret Service field office for booking, and prepared a criminal complaint. Due to congestion in the federal magistrate's docket, respondent was not presented on the federal complaint until the following day.{GO>1}

Respondent was indicted for unlawful possession of counterfeit currency in violation of 18 U.S.C. § 472. Prior to trial, he moved to suppress the statement he had made during [511 U.S. 353] his interview with the Secret Service agents. He argued that his confession was made without a voluntary and knowing waiver of his *Miranda* rights, and that the delay between his arrest on state charges and his presentment on the federal charge rendered his confession inadmissible under 18 U.S.C. § 3501(c).{GO>2} The District Court rejected [511 U.S. 354] both contentions and denied the motion. Respondent subsequently was convicted after a jury trial at which the statement was admitted into evidence.

The United States Court of Appeals for the Ninth Circuit vacated the conviction. 975 F.2d 1396 (1992). The court first outlined the exclusionary rule developed by this Court in a line of cases including *McNabb v. United States,* 318 U.S. 332 (1943), and *Mallory v. United States,* 354 U.S. 449 (1957). The so-called *McNabb-Mallory* rule, adopted by this Court "[i]n the exercise of its supervisory authority over the administration of criminal justice in the federal courts," *McNabb, supra,* at 341, generally rendered inadmissible confessions

made during periods of detention that violated the prompt presentment requirement of Rule 5(a) of the Federal Rules of Criminal Procedure. *See Mallory, supra,* at 453. Rule 5(a) provides that a person arrested for a federal offense shall be taken "without unnecessary delay" before the nearest federal magistrate, or before a state or local judicial officer authorized to set bail for federal offenses under 18 U.S.C. § 3041, for a first appearance, or presentment.

The Ninth Circuit went on to discuss the interrelated provisions of 18 U.S.C. § 3501 and the decisions of the Courts of Appeals that have sought to discern the extent to which this statute curtailed the *McNabb*-*Mallory* rule. Section 3501(a), the court observed, states that a confession "shall be admitted in evidence" if voluntarily made, and § 3501(b) lists several nonexclusive factors that the trial judge should consider when making the voluntariness determination, including "the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment." Section 3501(c) provides [511 U.S. 355] that a confession made by a person within six hours following his arrest or other detention "shall not be inadmissible" solely because of delay in presenting the person to a federal magistrate. The Ninth Circuit construed § 3501(c) as precluding suppression under *McNabb*-*Mallory* of any confession made during this "safe harbor" period following arrest. 975 F.2d at 1399. The court then reasoned that, by negative implication, § 3501(c) must in some circumstances allow suppression of a confession made more than six hours after arrest solely on the basis of pre-presentment delay, "regardless of the voluntariness of the confession." *Id.* at 1401. The court thus concluded that the *McNabb*-*Mallory* rule, in either a pure or slightly modified form, applies to confessions made after the expiration of the safe harbor period.

Turning to the facts of the case before it, the court determined that § 3501(c) applied to respondent's statement because respondent was in custody and had not been presented to a magistrate at the time of the interview. The court concluded that the statement fell outside the subsection's safe harbor because it was not made until Monday afternoon, nearly three days after respondent's arrest on state charges. *Id.* at 1405, and n. 8 (citing *United States v. Fouche,* 776 F.2d 1398, 1406 (CA9 1985)). Because the statement was not made within the § 3501(c) safe harbor period, the court applied both its pure and modified versions of the *McNabb*-*Mallory* rule and held that, under either approach, the confession should have been suppressed. 975 F.2d at 1405-1406.

We granted the Government's petition for a writ of certiorari in order to consider the Ninth Circuit's interpretation of § 3501. 510 U.S. 912 (1993).

II

The parties argue at some length over the proper interpretation of subsections (a) and (c) of 18 U.S.C. § 3501, and, in particular, over the question whether § 3501(c) requires [511 U.S. 356] suppression of a confession that is made by an arrestee prior to presentment and more than six hours after arrest, regardless of whether the confession was voluntarily made. The Government contends that through § 3501, Congress

repudiated the *McNabb*-*Mallory* rule in its entirety. Under this theory, § 3501(c) creates a safe harbor that prohibits suppression on grounds of pre-presentment delay if a confession is made within six hours following arrest, but says nothing about the admissibility of a confession given beyond that 6-hour period. The admissibility of such a confession, the Government argues, is controlled by § 3501(a), which provides that voluntary confessions "shall be admitted in evidence."

Largely agreeing with the Ninth Circuit, respondent contends that § 3501(c) codified a limited form of the *McNabb*-*Mallory* rule -- one that requires the suppression of a confession made before presentment but after the expiration of the safe harbor period. A contrary interpretation of § 3501(c), respondent argues, would render that subsection meaningless in the face of § 3501(a).

As the parties recognize, however, we need not address subtle questions of statutory construction concerning the safe harbor set out in § 3501(c), or resolve any tension between the provisions of that subsection and those of § 3501(a), if we determine that the terms of § 3501(c) were never triggered in this case. We turn, then, to that threshold inquiry.

When interpreting a statute, we look first and foremost to its text. *Connecticut Nat. Bank v. Germain,* 503 U.S. 249, 253-254 (1992). Section 3501(c) provides that, in any federal criminal prosecution,

> a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law enforcement officer or law enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a **[511 U.S. 357]** magistrate or other officer empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia if such confession is found by the trial judge to have been made voluntarily and if . . . such confession was made or given by such person within six hours immediately following his arrest or other detention.

Respondent contends that he was under "arrest or other detention" for purposes of § 3501(c) during the interview at the Sheriff's Department, and that his statement to the Secret Service agents constituted a confession governed by this subsection. In respondent's view, it is irrelevant that he was in the custody of the local authorities, rather than that of the federal agents, when he made the statement. Because the statute applies to persons in the custody of "*any*" law enforcement officer or law enforcement agency, respondent suggests that the § 3501(c) 6-hour time period begins to run whenever a person is arrested by local, state, *or* federal officers.

We believe respondent errs in placing dispositive weight on the broad statutory reference to "any" law enforcement officer or agency without considering the rest of the statute. Section 3501(c) provides that, if certain conditions are met, a confession made by a person under "arrest or other detention" shall not be inadmissible in a subsequent federal prosecution

> solely because of *delay* in bringing such person before a magistrate or other officer empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia.

18 U.S.C. § 3501(c) (emphasis added). Clearly, the terms of the subsection can apply only when there is some "delay" in presentment. Because "delay" is not defined in the statute, we must construe the term "in accordance with its ordinary or natural meaning." *FDIC v. Meyer,* 510 U.S. 471, 476 (1994). To delay is "[t]o postpone until a later time" or to "put off an action"; a delay is a "postponement." American Heritage Dictionary [511 U.S. 358] 493 (3d ed. 1992). The term presumes an obligation to act. Thus, there can be no "delay" in bringing a person before a federal magistrate until, at a minimum, there is some obligation to bring the person before such a judicial officer in the first place. Plainly, a duty to present a person to a federal magistrate does not arise until the person has been arrested for a *federal* offense. *See* Fed.Rule Crim.Proc. 5(a) (requiring initial appearance before a federal magistrate).{GO>3} Until a person is arrested or detained for a federal crime, there is no duty, obligation, or reason to bring him before a judicial officer "empowered to commit persons charged with offenses against the laws of the United States," and therefore, no "delay" under § 3501(c) can occur.

In short, it is evident "from the context in which [the phrase] is used," *Deal v. United States,* 508 U.S. 129, 132 (1993), that the "arrest or other detention" of which the subsection speaks must be an "arrest or other detention" for a violation of *federal* law. If a person is arrested and held on a federal charge by "any" law enforcement officer -- federal, state, or local -- that person is under "arrest or other detention" for purposes of § 3501(c) and its 6-hour safe harbor period. If, instead, the person is arrested and held on state charges, § 3501(c) does not apply, and the safe harbor is not implicated. This is true even if the arresting officers (who, when the arrest is for a violation of state law, almost certainly will be agents of the State or one of its subdivisions) believe or have cause to believe that the person also may have violated federal law. Such a belief, which may not be uncommon given that many activities are criminalized under both state and federal law, does not alter the underlying basis for the arrest and subsequent custody. As long as a person is arrested and held only on state charges by state or local authorities, the provisions of § 3501(c) are not triggered. [511 U.S. 359]

In this case, respondent was under arrest on *state* narcotics charges at the time he made his inculpatory statement to the Secret Service agents. The terms of § 3501(c) thus did not come into play until respondent was arrested by the agents on a federal charge -- *after* he made the statement. Because respondent's statement was made voluntarily, as the District Court found, *see* App. to Pet. for Cert. 45a, nothing in § 3501 authorized its suppression. *See* 18 U.S.C. §§ 3501(a), (d). The State's failure to arraign or prosecute respondent does not alter this conclusion. Although Congress could have provided that the exercise of prosecutorial discretion by the State in this scenario retroactively transforms time spent in the custody of state or local officers into time spent under "arrest or other

detention" for purposes of § 3501(c), it did not do so in the statute as written. *Cf. Germain,* 503 U.S. at 253-254 (1992).

Although we think proper application of § 3501(c) will be as straightforward in most cases as it is here, the parties identify one presumably rare scenario that might present some potential for confusion; namely, the situation that would arise if state or local authorities, acting in collusion with federal officers, were to arrest and detain someone in order to allow the federal agents to interrogate him in violation of his right to a prompt federal presentment. Long before the enactment of § 3501, we held that a confession obtained during such a period of detention must be suppressed if the defendant could demonstrate the existence of improper collaboration between federal and state or local officers. *See Anderson v. United States,* 318 U.S. 350 (1943).{GO>4} In this [511 U.S. 360] case, however, we need not address § 3501's effect, if any, on the rule announced in *Anderson.* The District Court concluded that there was "no evidence" that a "collusive arrangement between state and federal agents . . . caused [respondent's] confession to be made," App. to Pet. for Cert. 50a, and we see no reason to disturb that factual finding. It is true that the Sheriff's Department informed the Secret Service agents that counterfeit currency had been found in respondent's possession, but such routine cooperation between local and federal authorities is, by itself, wholly unobjectionable: "Only by such an interchange of information can society be adequately protected against crime." *United States v. Coppola,* 281 F.2d 340, 344 (CA2 1960) (en banc), *aff'd,* 365 U.S. 762 (1961). *Cf. Bartkus v. Illinois,* 359 U.S. 121, 123 (1959).{GO>5}

III

For the foregoing reasons, the judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

So ordered. [511 U.S. 361]

GINSBURG, J., concurring

JUSTICE GINSBURG, with whom JUSTICE BLACKMUN joins, concurring.

When Alvarez-Sanchez was arrested by the Los Angeles Sheriff's Department, 18 U.S.C. § 3501(c) was not triggered. As the Court explains, an arrest by state or local law enforcement authorities on state criminal charges is not an "arrest or other detention" within the meaning of § 3501(c), and there is no evidence in this case of any "improper collaboration," *ante* at 359, or "working arrangement," *Anderson v. United States,* 318 U.S. 350, 356 (1943), between local and federal authorities. *See ante* at 357-360 and n. 4. I write separately only to emphasize that we do *not* decide today a question on which the Courts of Appeals remain divided: the effect of § 3501(c) on confessions obtained more than six hours after an arrest on federal charges. *See ante* at 356, 359-360.GO>*

STEVENS, J., concurring

JUSTICE STEVENS, concurring in the judgment.

The Court holds that § 3501(c) "does not apply to statements made by a person who is being held solely on state charges." *Ante* at 352. While I agree with the Court's answer to the narrow question the petition for certiorari presents,{GO>1} I write separately to emphasize the importance of the factual premise underlying that answer. **[511 U.S. 362]**

As the case comes to us, it is undisputed that respondent confessed while he was being held on state charges alone. 975 F.2d 1396, 1398 (CA9 1992). Accepting that, the Court of Appeals held that the confession nevertheless must be suppressed because it read the phrase "detention in the custody of any law enforcement officer or law enforcement agency" in 18 U.S.C. § 3501(c) to include custody solely on state charges. *Id.* at 1405. The Court of Appeals therefore had no occasion to consider whether the state police officers' awareness of respondent's probable involvement in two federal crimes{GO>2} might indicate that the state charges were not the sole basis for his detention.

In its petition for certiorari, the Government correctly advised us that "[r]eversal of the Ninth Circuit's erroneous conclusion that the relevant arrest was effected by California authorities will obviate the need to consider" additional issues. Pet. for Cert. 13. Accordingly, what sort of cooperation between federal and local authorities would remove a case from the category in which the custody is decidedly on state charges alone is a question not before us, and the Court correctly declines to address the matter. Surely, however, cases in which cooperation between state and federal authorities requires compliance with the terms of § 3501(c) are not merely hypothetical examples of a "presumably rare scenario," *ante* at 359. And I definitely would not assume that § 3501(c) will never "come into play" until a suspect is arrested on a federal charge. *Ibid.*

The Court also has no reason to comment on the District Court's finding that respondent's confession was not the product of collusion between state and federal agents. **[511 U.S. 363]** *Ante* at 360. The Court of Appeals' construction of the statute made review of that finding unnecessary. Thus while the Court rightly declines to "disturb" the factual finding, *ibid.,* it should likewise stop short of suggesting that anyone on this Court has determined that the finding is either correct or incorrect.

For these reasons, I concur in the Court's judgment, but do not join its opinion.

Footnotes

THOMAS, J., lead opinion (Footnotes)

1. For reasons that are not apparent from the record, respondent was never arraigned or prosecuted by the State of California on the state drug charges.

2. Title 18 U.S.C. § 3501 provides:

> (a) In any criminal prosecution brought by the United States or by the District of Columbia, a confession, as defined in subsection (e) hereof, shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence. . . .
>
> (b) The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment. . . . The presence or absence of any of the above-mentioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession.
>
> (c) In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law enforcement officer or law enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a magistrate or other officer empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury and if such confession was made or given by such person within six hours immediately following his arrest or other detention: *Provided,* That the time limitation contained in this subsection shall not apply in any case in which the delay in bringing such person before such magistrate or other officer beyond such six-hour period is found by the trial judge to be reasonable considering the means of transportation and the distance to be traveled to the nearest available such magistrate or other officer.
>
> (d) Nothing contained in this section shall bar the admission in evidence of any confession made or given voluntarily by any person to any other person without interrogation by anyone, or at any time at which the person who made or gave such confession was not under arrest or other detention.
>
> (e) As used in this section, the term "confession" means any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing.

- 3. As we observed in *Mallory v. United States,* 354 U.S. 449 (1957), Rule 5(a) is part of "[t]he scheme for initiating a *federal* prosecution." *Id.* at 454 (emphasis added).

- 4. In *Anderson,* a local sheriff, acting without authority under state law, arrested several men suspected of dynamiting federally owned power lines during the course of a labor dispute and allowed them to be interrogated for several days by agents of the Federal Bureau of Investigation. Only after the suspects made confessions were they arrested by the federal agents and arraigned before a United States commissioner. We held the confessions to be inadmissible as the "improperly" secured product of an impermissible "working arrangement" between state and federal officers. 318 U.S. at 356.

- 5. Respondent urges that the judgment below should be affirmed on an alternative ground. Although he was initially arrested on state charges on a Friday afternoon and held in local custody until Monday afternoon, respondent was not brought before a magistrate during this period. In *County of Riverside v.*

McLaughlin, 500 U.S. 44, 57 (1991), we held that the Fourth Amendment generally requires a judicial determination of probable cause within 48 hours of a warrantless arrest. Relying on *McLaughlin* and *Gerstein v. Pugh,* 420 U.S. 103 (1975), respondent now asserts that his confession was obtained during an ongoing violation of his Fourth Amendment right to a prompt determination of probable cause. Respondent, however, did not raise a Fourth Amendment claim in the District Court or the Court of Appeals; he argued for suppression based only on the Fifth Amendment and § 3501. Finding no exceptional circumstances that would warrant reviewing a claim that was waived below, we adhere to our general practice and decline to address respondent's Fourth Amendment argument. *See Granfinanceria, S.A. v. Nordberg,* 492 U.S. 33, 38-39 (1989); *Heckler v. Campbell,* 461 U.S. 458, 468-469, n. 12 (1983).

GINSBURG, J., concurring (Footnotes)

- * *Compare, e.g.,* 975 F.2d 1396, 1402-1403 (1992) (decision below), *and United States v. Perez,* 733 F.2d 1026, 1031 (CA2 1984) ("§ 3501 leaves the *McNabb*-*Mallory* rule intact with regard to confessions obtained after a six hour delay not found to be reasonable"); *United States v. Robinson,* 439 F.2d 553, 563-564 (CADC 1970) (same), *with United States v. Christopher,* 956 F.2d 536, 538-539 (CA6 1991) (under § 3501, unnecessary delay of more than six hours, "standing alone, is not sufficient to justify the suppression of an otherwise voluntary confession"), *cert. denied,* 505 U.S. 1207 (1992); *United States v. Beltran,* 761 F.2d 1, 8 (CA1 1985) (same).

STEVENS, J., concurring (Footnotes)

- 1. The question presented is

Whether a confession given to federal authorities while a suspect is in state custody awaiting arraignment on state charges must be suppressed as a result of delay between the suspect's original arrest by state authorities and his eventual presentment on the federal crime to which he confessed.

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- 2. Los Angeles police officers took respondent into custody on a Friday. 975 F.2d 1396, 1397-1398 (CA9 1992). At the time of arrest, those officers discovered that respondent possessed two kinds of contraband -- narcotics and counterfeit money, *id.* at 1398 -- and they presumably realized that he was guilty of at least two federal offenses as well as the state law violation for which he was arrested.

Cases citing this case . . .

U.S. Supreme Court

UNITED STATES v. MONSANTO, 491 U.S. 600 (1989)

491 U.S. 600

UNITED STATES v. MONSANTO
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 88-454.

Argued March 21, 1989
Decided June 22, 1989

Respondent, who allegedly directed a large-scale heroin distribution enterprise, was indicted for alleged violations of racketeering laws, creation of a continuing criminal enterprise, and tax and firearm offenses. The indictment also alleged that respondent had accumulated three specified assets as a result of his narcotics trafficking, which were subject to forfeiture under the Comprehensive Forfeiture Act of 1984, 21 U.S.C. 853. After the indictment was unsealed, the District Court granted the Government's ex parte motion under 853(e)(1)(A) for a restraining order freezing the assets pending trial. Respondent, raising various statutory arguments and claiming that the order interfered with his Sixth Amendment right to counsel of his choice, moved to vacate the order to permit him to use frozen assets to retain an attorney. He also sought a declaration that if the assets were used to pay attorney's fees, 853(c)'s third-party transfer provision would not be used to reclaim such payments if respondent was convicted and his assets forfeited. The District Court denied the motion. However, the Court of Appeals ultimately ordered that the restraining order be modified to permit the restrained assets to be used to pay attorney's fees.

Held:

1. There is no exemption from 853's forfeiture or pretrial restraining order provisions for assets that a defendant wishes to use to retain an attorney. Pp. 606-614.

(a) Section 853's language is plain and unambiguous. Congress could not have chosen stronger words to express its intent that forfeiture be mandatory than 853(a)'s language that upon conviction a person "shall forfeit . . . any property" and that the sentencing court "shall order" a forfeiture. Likewise, the statute provides a broad definition of property which does not even hint at the idea that assets used for attorney's fees are not included. Every Court of Appeals that has finally passed on this argument has agreed with this view. Neither the Act's legislative history nor legislators' postenactment statements support respondent's argument that an exception should be created because the statute does not expressly include property to be used for attorney's fees or because Congress simply did not consider the prospect that forfeiture [491 U.S. 600, 601] would reach such property. To the contrary, in the Victims of Crime Act - which requires forfeiture of a convicted defendant's collateral profits derived from his crimes and which was enacted simultaneously with the statute in question - Congress adopted

expressly the precise exemption from forfeiture which respondent is seeking to have implied in 853. Moreover, respondent's admonition that courts should construe statutes to avoid decision as to their constitutionality is not license for the judiciary to rewrite statutory language. Pp. 606-611.

(b) Respondent's reading of 853(e)(1)(A) - which provides that a district court "may enter a restraining order or injunction . . . or take any other action to preserve the availability of property . . . for forfeiture" - misapprehends the nature of 853 by giving a district court equitable discretion to determine whether to exempt assets from pretrial restraint and by concluding that if such assets are used for attorney's fees, they may not subsequently be seized for forfeiture to the Government under 853(c). Section 853(e)(1)(A) plainly is aimed at implementing 853(a)'s commands and cannot sensibly be construed to give the district court discretion to permit the dissipation of the very property it requires be forfeited upon conviction, since this would nullify 853(a)'s strong language as well as 853(c)'s powerful "relation-back" provision. Pp. 611-614.

2. The restraining order did not violate respondent's right to counsel of choice as protected by the Sixth Amendment or the Due Process Clause of the Fifth Amendment. For the reasons stated in Caplin & Drysdale, Chartered v. United States, post, p. 617, neither the Fifth nor the Sixth Amendment requires Congress to permit a defendant to use assets adjudged to be forfeitable to pay the defendant's legal fees. Moreover, a defendant's assets may be frozen before conviction based on a finding of probable cause to believe the assets are forfeitable. See, e. g., United States v. $8,850, 461 U.S. 555; Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663. Indeed, concluding that the Government could not restrain such property would be odd considering that, under appropriate circumstances, the Government may restrain persons accused of a serious offense on a probable-cause finding. See United States v. Salerno, 481 U.S. 739 . Pp. 614-616.

852 F.2d 1400, reversed and remanded.

WHITE, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, and KENNEDY, JJ., joined. BLACKMUN, J., filed a dissenting opinion, in which BRENNAN, MARSHALL, and STEVENS, JJ., joined, post, p. 635.
[491 U.S. 600, 602]

Acting Solicitor General Bryson argued the cause for the United States. With him on the briefs were Assistant Attorney General Dennis, Edwin S. Kneedler, and Sara Criscitelli.

Edward M. Chikofsky argued the cause and filed a brief for respondent. *

[Footnote *] Briefs of amici curiae urging reversal were filed for the State of California by John K. Van de Kamp, Attorney General, Steve White, Chief Assistant Attorney General, John A. Gordnier, Senior Assistant Attorney General, and Gary W. Schons, Deputy Attorney General; and for Eugene R. Anderson, pro se.

Briefs of amici curiae urging affirmance were filed for the Committees on Criminal Advocacy and Criminal Law of the Association of the Bar of the City of New York et al. by Arthur L. Liman; and for the National Association of Criminal Defense Lawyers et al. by Joseph Beeler and Bruce J. Winick.

Briefs of amici curiae were filed for the American Bar Association by Robert D. Raven, Charles G. Cole, Antonia B. Ianniello, and Terrance G. Reed; and for the Appellate Committee of the California District Attorneys Association by Ira Reiner, Harry B. Sondheim, and Arnold T. Guminski.

JUSTICE WHITE delivered the opinion of the Court.

The questions presented here are whether the federal drug forfeiture statute authorizes a district court to enter a pretrial order freezing assets in a defendant's possession, even where the defendant seeks to use those assets to pay an attorney; if so, we must decide whether such an order is permissible under the Constitution. We answer both of these questions in the affirmative.

I

In July 1987, an indictment was entered, alleging that respondent had directed a large-scale heroin distribution enterprise. The multi-count indictment alleged violations of racketeering laws, creation of a continuing criminal enterprise (CCE), and tax and firearm offenses. The indictment also alleged that three specific assets - a home, an apartment, and $35,000 in cash - had been accumulated by respondent as a result of his narcotics trafficking. These assets, the indictment [491 U.S. 600, 603] alleged, were subject to forfeiture under the Comprehensive Forfeiture Act of 1984 (CFA), 98 Stat. 2044, as amended, 21 U.S.C. 853(a) (1982 ed., Supp. V), because they were "property constituting, or derived from . . . proceeds . . . obtained" from drug-law violations. 1

On the same day that the indictment was unsealed, the District Court granted the Government's ex parte motion, pursuant to 853(e)(1)(A), 2 for a restraining order freezing [491 U.S. 600, 604] the above-mentioned assets pending trial. Shortly thereafter, respondent moved to vacate this restraining order, to permit him to use the frozen assets to retain an attorney. Respondent's motion further sought a declaration that if these assets were used to pay an attorney's fees, 853(c)'s third-party transfers provision would not subsequently be used to reclaim such payments if respondent was convicted and his assets forfeited. 3 Respondent raised various statutory challenges to the restraining order, and claimed that it interfered with his Sixth Amendment right to counsel of choice. The District Court denied the motion to vacate. [491 U.S. 600, 605]

On appeal, the Second Circuit concluded that respondent's statutory and Sixth Amendment challenges were lacking, but remanded the case to the District Court for an adversarial hearing "at which the government ha[d] the burden to demonstrate the likelihood that the assets are forfeitable"; if the Government failed its burden at such a hearing, the Court of Appeals held, any fees paid to an attorney would be exempt from forfeiture irrespective of the final outcome at respondent's trial. 836 F.2d 74, 84 (1987). Pursuant to this mandate, on remand, the District Court held a 4-day hearing on whether

continuing the restraining order was proper. At the end of the hearing, the District Court ruled that it would continue the restraining order because the Government had "overwhelmingly established a likelihood" that the property in question would be forfeited at the end of trial. App. to Pet. for Cert. 86a. Ultimately, respondent's criminal case proceeded to trial, where he was represented by a Criminal Justice Act-appointed attorney. 4

In the meantime, the Second Circuit vacated its earlier opinion and heard respondent's appeal en banc. 5 The en [491 U.S. 600, 606] banc court, by an 8-to-4 vote, ordered that the District Court's restraining order be modified to permit the restrained assets to be used to pay attorney's fees. 852 F.2d 1400 (1988). The Court was sharply divided as to its rationale. Three of the judges found that the order violated the Sixth Amendment, while three others questioned it on statutory grounds; two judges found 853 suspect under the Due Process Clause for its failure to include a statutory provision requiring the sort of hearing that the panel had ordered in the first place. The four dissenting judges would have upheld the restraining order.

We granted certiorari, 488 U.S. 941 (1988), because the Second Circuit's decision created a conflict among the Courts of Appeals over the statutory and constitutional questions presented. 6 We now reverse.

II

We first must address the question whether 853 requires, upon conviction, forfeiture of assets that an accused intends to use to pay his attorneys.

A

> "In determining the scope of a statute, we look first to its language." United States v. Turkette, 452 U.S. 576, 580 (1981). In the case before us, the language of 853 is plain and unambiguous: all assets falling within its scope are to be forfeited upon conviction, with no exception existing for the assets used to pay attorney's fees - or anything else, for that matter. [491 U.S. 600, 607]
>
> As observed above, 853(a) provides that a person convicted of the offenses charged in respondent's indictment "shall forfeit . . . any property" that was derived from the commission of these offenses. After setting out this rule, 853(a) repeats later in its text that upon conviction a sentencing court "shall order" forfeiture of all property described in 853(a). Congress could not have chosen stronger words to express its intent that forfeiture be mandatory in cases where the statute applied, or broader words to define the scope of what was to be forfeited. Likewise, the statute provides a broad definition of "property" when describing what types of assets are within the section's scope: "real property . . . tangible and intangible personal property, including rights, privileges, interests, claims, and securities." 21 U.S.C. 853(b) (1982 ed., Supp. V). Nothing in

> this all-inclusive listing even hints at the idea that assets to be used to pay an attorney are not "property" within the statute's meaning.

Nor are we alone in concluding that the statute is unambiguous in failing to exclude assets that could be used to pay an attorney from its definition of forfeitable property. This argument, advanced by respondent here, see Brief for Respondent 12-19, has been unanimously rejected by every Court of Appeals that has finally passed on it, 7 as it was by the Second Circuit panel below, see 836 F.2d, at 78-80; id., at 85-86 (Oakes, J., dissenting); even the judges who concurred on statutory grounds in the en banc decision did not accept this position, see 852 F.2d, at 1405-1410 (Winter, J., concurring). We note also that the Brief for American Bar [491 U.S. 600, 608] Association as Amicus Curiae 6 frankly admits that the statute "on [its] face, broadly cover[s] all property derived from alleged criminal activity and contain[s] no specific exemption for property used to pay bona fide attorneys' fees."

Respondent urges us, nonetheless, to interpret the statute to exclude such property for several reasons. Principally, respondent contends that we should create such an exemption because the statute does not expressly include property to be used for attorneys' fees, and/or because Congress simply did not consider the prospect that forfeiture would reach assets that could be used to pay for an attorney. In support, respondent observes that the legislative history is "silent" on this question, and that the House and Senate debates fail to discuss this prospect. 8 But this proves nothing: the legislative [491 U.S. 600, 609] history and congressional debates are similarly silent on the use of forfeitable assets to pay stockbroker's fees, laundry bills, or country club memberships; no one could credibly argue that, as a result, assets to be used for these purposes are similarly exempt from the statute's definition of forfeitable property. The fact that the forfeiture provision reaches assets that could be used to pay attorney's fees, even though it contains no express provisions to this effect, "`does not demonstrate ambiguity'" in the statute: "`It demonstrates breadth.'" Sedima, S. P. R. L. v. Imrex Co., 473 U.S. 479, 499 (1985) (quoting Haroco, Inc. v. American Nat. Bank & Trust Co. of Chicago, 747 F.2d 384, 398 (CA7 1984)). The statutory provision at issue here is broad and unambiguous, and Congress' failure to supplement 853(a)'s comprehensive phrase - "any property" - with an exclamatory "and we even mean assets to be used to pay an attorney" does not lessen the force of the statute's plain language. [491 U.S. 600, 610]

We also find unavailing respondent's reliance on the comments of several legislators - made following enactment - to the effect that Congress did not anticipate the use of the forfeiture law to seize assets that would be used to pay attorneys. See Brief for Respondent 15-16, and n. 9 (citing comments of Sen. Leahy and Reps. Hughes and Shaw). As we have noted before, such post-enactment views "form a hazardous basis for inferring the intent" behind a statute, United States v. Price, 361 U.S. 304, 313 (1960); instead, Congress' intent is "best determined by [looking to] the statutory language that it chooses," Sedima, S. P. R. L., supra, at 495, n. 13. Moreover, we observe that these comments are further subject to question because Congress has refused to act on repeated suggestions by the defense bar for the sort of exemption respondent urges here, 9 even

though it has amended 853 in other respects since these entreaties were first heard. See Pub. L. 99-570, 1153(b), 1864, 100 Stat. 3207-13, 3207-54.

In addition, we observe that in the very same law by which Congress adopted the CFA - Pub. L. 98-473, 98 Stat. 1837 - Congress also adopted a provision for the special forfeiture of collateral profits (e. g., profits from books, movies, etc.) that a convicted defendant derives from his crimes. See Victims of Crime Act of 1984, 98 Stat. 2175-2176 (now codified at 18 U.S.C. 3681-3682 (1982 ed., Supp. V)). That forfeiture provision expressly exempts "pay[ments] for legal representation of the defendant in matters arising from the offense for which such defendant has been convicted, but no more than 20 percent of the total [forfeited collateral profits] may be so used." 3681(c)(1)(B)(ii). Thus, Congress adopted expressly - in a statute enacted simultaneously with the one under review in this case - the precise exemption from forfeiture [491 U.S. 600, 611] which respondent asks us to imply into 853. The express exemption from forfeiture of assets that could be used to pay attorney's fees in Chapter XIV of Pub. L. 98-473 indicates to us that Congress understood what it was doing in omitting such an exemption from Chapter III of that enactment.

Finally, respondent urges us, see Brief for Respondent 20-29, to invoke a variety of general canons of statutory construction, as well as several prudential doctrines of this Court, to create the statutory exemption he advances; among these doctrines is our admonition that courts should construe statutes to avoid decision as to their constitutionality. See, e. g., Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Constr. Trades Council, 485 U.S. 568, 575 (1988); NLRB. v. Catholic Bishop of Chicago, 440 U.S. 490, 500 (1979). We respect these canons, and they are quite often useful in close cases, or when statutory language is ambiguous. But we have observed before that such "interpretative canon[s are] not a license for the judiciary to rewrite language enacted by the legislature." United States v. Albertini, 472 U.S. 675, 680 (1985). Here, the language is clear and the statute comprehensive: 853 does not exempt assets to be used for attorney's fees from its forfeiture provisions.

In sum, whatever force there might be to respondent's claim for an exemption from forfeiture under 853(a) of assets necessary to pay attorney's fees - based on his theories about the statute's purpose, or the implications of interpretative canons, or the understandings of individual Members of Congress about the statute's scope - "[t]he short answer is that Congress did not write the statute that way." United States v. Naftalin, 441 U.S. 768, 773 (1979).

B

Although 853(a) recognizes no general exception for assets used to pay an attorney, we are urged that the provision [491 U.S. 600, 612] in 853(e)(1)(A) for pretrial restraining orders on assets in a defendant's possession should be interpreted to include such an exemption. It was on this ground that Judge Winter concurred below. 852 F.2d, at 1405-1411.

The restraining order subsection provides that, on the Government's application, a district court "may enter a restraining order or injunction . . . or take any other action to preserve the availability of property . . . for forfeiture under this section." 21 U.S.C. 853(e)(1) (1982 ed., Supp. V). Judge Winter read the permissive quality of the subsection (i. e., "may enter") to authorize a district court to employ "traditional principles of equity" before restraining a defendant's use of forfeitable assets; a balancing of hardships, he concluded, generally weighed against restraining a defendant's use of forfeitable assets to pay for an attorney. 852 F.2d, at 1406. Judge Winter further concluded that assets not subjected to pretrial restraint under 853(e), if used to pay an attorney, may not be subsequently seized for forfeiture to the Government, notwithstanding the authorization found in 853(c) for recoupment of forfeitable assets transferred to third parties.

This reading seriously misapprehends the nature of the provisions in question. As we have said, 853(a) is categorical: it contains no reference at all to 853(e) or 853(c), let alone any reference indicating that its reach is limited by those sections. Perhaps some limit could be implied if these provisions were necessarily inconsistent with 853(a). But that is not the case. Under 853(e)(1), the trial court "may" enter a restraining order if the United States requests it, but not otherwise, and it is not required to enter such an order if a bond or some other means to "preserve the availability of property described in subsection (a) of this section for forfeiture" is employed. Thus, 853(e)(1)(A) is plainly aimed at implementing the commands of 853(a) and cannot sensibly be construed to give the district court discretion to permit [491 U.S. 600, 613] the dissipation of the very property that 853(a) requires be forfeited upon conviction.

We note that the "equitable discretion" that is given to the judge under 853(e)(1)(A) turns out to be no discretion at all as far as the issue before us here is concerned: Judge Winter concludes that assets necessary to pay attorney's fees must be excluded from any restraining order. See 852 F.2d, at 1407-1409. For that purpose, the word "may" becomes "may not." The discretion found in 853(e) becomes a command to use that subsection (and 853(c)) to frustrate the attainment of 853(a)'s ends. This construction is improvident. Whatever discretion Congress gave the district courts in 853(e) and 853(c), that discretion must be cabined by the purposes for which Congress created it: "to preserve the availability of property . . . for forfeiture." We cannot believe that Congress intended to permit the effectiveness of the powerful "relation-back" provision of 853(c), and the comprehensive "any property . . . any proceeds" language of 853(a), to be nullified by any other construction of the statute.

This result may seem harsh, but we have little doubt that it is the one that the statute mandates. Section 853(c) states that "[a]ll right, title, and interest in [forfeitable] property . . . vests in the United States upon the commission of the act giving rise to forfeiture." Permitting a defendant to use assets for his private purposes that, under this provision, will become the property of the United States if a conviction occurs cannot be sanctioned. Moreover, this view is supported by the relevant legislative history, which states that "[t]he sole purpose of [853's] restraining order provision . . . is to preserve the status quo, i. e., to assure the availability of the property pending disposition of the criminal case." S. Rep. No. 98-225, p. 204 (1983). If, instead, the statutory interpretation

adopted by Judge Winter's concurrence were applied, this purpose would not be achieved. [491 U.S. 600, 614]

We conclude that there is no exemption from 853's forfeiture or pretrial restraining order provisions for assets which a defendant wishes to use to retain an attorney. In enacting 853, Congress decided to give force to the old adage that "crime does not pay." We find no evidence that Congress intended to modify that nostrum to read, "crime does not pay, except for attorney's fees." If, as respondent and supporting amici so vigorously assert, we are mistaken as to Congress' intent, that body can amend this statute to otherwise provide. But the statute, as presently written, cannot be read any other way.

III

Having concluded that the statute authorized the restraining order entered by the District Court, we reach the question whether the order violated respondent's right to counsel of choice as protected by the Sixth Amendment or the Due Process Clause of the Fifth Amendment.

A

Respondent's most sweeping constitutional claims are that, as a general matter, operation of the forfeiture statute interferes with a defendant's Sixth Amendment right to counsel of choice, and the guarantee afforded by the Fifth Amendment's Due Process Clause of a "balance of forces" between the accused and the Government. In this regard, respondent contends, the mere prospect of post-trial forfeiture is enough to deter a defendant's counsel of choice from representing him.

In another decision we announce today, Caplin & Drysdale, Chartered v. United States, post, p. 617, we hold that neither the Fifth nor the Sixth Amendment to the Constitution requires Congress to permit a defendant to use assets adjudged to be forfeitable to pay that defendant's legal fees. We rely on our conclusion in that case to dispose of the similar constitutional claims raised by respondent here. [491 U.S. 600, 615]

B

In addition to the constitutional issues raised in Caplin & Drysdale, respondent contends that freezing the assets in question before he is convicted - and before they are finally adjudged to be forfeitable - raises distinct constitutional concerns. We conclude, however, that assets in a defendant's possession may be restrained in the way they were here based on a finding of probable cause to believe that the assets are forfeitable. 10

We have previously permitted the Government to seize property based on a finding of probable cause to believe that the property will ultimately be proved forfeitable. See, e.g., United States v. $8,850, 461 U.S. 555 (1983); Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974). Here, where respondent was not ousted from his property, but merely restrained from disposing of it, the governmental intrusion was even less severe than those permitted by our prior decisions.

Indeed, it would be odd to conclude that the Government may not restrain property, such as the home and apartment in respondent's possession, based on a finding of probable cause, when we have held that (under appropriate circumstances), the Government may restrain persons where there [491 U.S. 600, 616] is a finding of probable cause to believe that the accused has committed a serious offense. See United States v. Salerno, 481 U.S. 739 (1987). Given the gravity of the offenses charged in the indictment, respondent himself could have been subjected to pretrial restraint if deemed necessary to "reasonably assure [his] appearance [at trial] and the safety of . . . the community," 18 U.S.C. 3142(e) (1982 ed., Supp. V); we find no constitutional infirmity in 853(e)'s authorization of a similar restraint on respondent's property to protect its "appearance" at trial and protect the community's interest in full recovery of any ill-gotten gains.

Respondent contends that both the nature of the Government's property right in forfeitable assets, and the nature of the use to which he would have put these assets (i. e., retaining an attorney), require some departure from our established rule of permitting pretrial restraint of assets based on probable cause. We disagree. In Caplin & Drysdale, we conclude that a weighing of these very interests suggests that the Government may - without offending the Fifth or Sixth Amendment - obtain forfeiture of property that a defendant might have wished to use to pay his attorney. Post, p. 617. Given this holding, we find that a pretrial restraining order does not "arbitrarily" interfere with a defendant's "fair opportunity" to retain counsel. Cf. Powell v. Alabama, 287 U.S. 45, 69 , 53 (1932). Put another way: if the Government may, post-trial, forbid the use of forfeited assets to pay an attorney, then surely no constitutional violation occurs when, after probable cause is adequately established, the Government obtains an order barring a defendant from frustrating that end by dissipating his assets prior to trial.

IV

For the reasons given above, the judgment of the Second Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Footnotes

[Footnote 1] The CFA added or amended forfeiture provisions for two classes of violations under federal law, racketeering offenses and CCE offenses, see 98 Stat. 2040-2053, as amended. The CCE forfeiture statute at issue here, now provides:

" 853. Criminal forfeitures

"(a) Property subject to criminal forfeiture

"Any person convicted of a violation of this subchapter or subchapter II of this chapter punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law -

> "(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;
>
> "(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and
>
> "(3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 848 of this title, the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.
>
> "The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this subchapter or subchapter II of this chapter, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds."

[Footnote 2] This statutory provision, the principal focus of this petition, says that:

> "Upon application of the United States, the court may enter a restraining order or injunction . . . or take any other action to preserve the availability of property described in subsection (a) of [853] for forfeiture under this section -
>
> "(A) upon the filing of an indictment or information charging a violation . . . for which criminal forfeiture may be ordered under [853] and alleging [491 U.S. 600, 604] that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section."

[Footnote 3] Section 853(c), the third-party transfer provision, states that:

> "All right, title, and interest in property described in [853] vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee [establishes his entitlement to such property pursuant to 853(n)]."

As noted in the quotation of 853(c), a person making a claim for forfeited assets must file a petition with the court pursuant to 853(n)(6):

> "If, after [a] hearing [on the petition], the court determines that the petitioner has established . . . that -

> "(A) the petitioner has a legal right, title, or interest in the property . . . [that predates] commission of the acts which gave rise to the forfeiture of the property under [853]; or
>
> "(B) the petitioner is a bona fide purchaser for value of the . . . property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;
>
> "the court shall amend the order of forfeiture in accordance with its determination."
>
> An attorney seeking a payment of fees from forfeited assets under 853(n)(6) would presumably rest his petition on subsection (B) quoted above, though (for reasons we explain in Caplin & Drysdale, Chartered v. United States, post, at 632, n. 10) it is highly doubtful that one who defends a client in a criminal case that results in forfeiture could prove that he was "without cause to believe that the property was subject to forfeiture." Cf. 852 F.2d, 1400, 1410 (CA2 1988) (Winter, J., concurring).

[Footnote 4] At the end of the trial, respondent was convicted of the charges against him, and the jury returned a special verdict finding the assets in question to be forfeitable beyond a reasonable doubt. Accordingly, the District Court entered a judgment of conviction and declared the assets forfeited.

We do not believe that these subsequent proceedings render the dispute over the pretrial restraining order moot. The restraining order remains in effect pending the appeal of respondent's conviction, see App. to Pet. for Cert. 77a-78a, which has not yet been decided. Consequently, the dispute before us concerning the District Court's order remains a live one.

[Footnote 5] Respondent's trial had commenced on February 16, 1988, after the Court of Appeals had agreed to hear the case en banc, but before it rendered its ruling. Consequently, respondent's assets remained frozen, and respondent was defended by appointed counsel.

In the midst of respondent's trial - on July 1, 1988 - the en banc Court of Appeals rendered its decision for respondent. At a hearing held four days later, the District Court offered to permit respondent to use the frozen assets to hire private counsel. Respondent rejected this offer, coming as [491 U.S. 600, 606] summations were about to get underway at the end of a 4 1/2-month trial, and instead continued with his appointed attorney. Three weeks later, on July 25, 1988, the jury returned a guilty verdict.

[Footnote 6] See, e. g., United States v. Moya-Gomez, 860 F.2d 706 (CA7 1988); United States v. Nichols, 841 F.2d 1485 (CA10 1988); United States v. Jones, 837 F.2d 1332 (CA5), rehearing granted, 844 F.2d 215 (1988); In re Forfeiture Hearing as to Caplin & Drysdale, Chartered, 837 F.2d 637 (CA4 1988) (en banc), aff'd sub nom. Caplin & Drysdale, Chartered v. United States, post, p. 617.

[Footnote 7] See United States v. Bissell, 866 F.2d 1343, 1348-1350 (CA11 1989); United States v. Moya-Gomez, supra, at 722-723; United States v. Nichols, 841 F.2d, at 1491-1496; id., at 1509 (Logan, J., dissenting); In re Forfeiture Hearing as to Caplin & Drysdale, Chartered, 837 F.2d, at 641-642 (en banc); id., at 651 (Phillips, J., dissenting). Only one Court of Appeals - the Fifth Circuit - has issued any decisions providing support for this reading of the statute, see, e. g., United States v. Jones, supra, but this ruling is currently being reconsidered en banc, 844 F.2d 215 (1988).

[Footnote 8] Respondent is correct that, by and large, the relevant House and Senate Reports make no mention of the attorney's fees question. However, in discussing the background motivating the adoption of the CFA, the House Judiciary Committee discussed the failure of previous, more lax forfeiture statutes:

> "One highly publicized case . . . is illustrative of the problem. That case was United States v. Meinster . . . . In this prosecution . . . a Florida based criminal organization had . . . grossed about $300 million over a 16-month period. The Federal Government completed a successful prosecution in which the three primary defendants were convicted and this major drug operation was aborted. However, forfeiture was attempted on only two [residences] worth $750,000 . . . .
>
> "Of the $750,000 for the residences, $175,000 was returned to the wife of one of the defendants, and $559,000 was used to pay the defendant's attorneys. . . .
>
> "The Government wound up with $16,000. . . .
>
> "It is against this background that present Federal forfeiture procedures are tested and found wanting." H. R. Rep. No. 98-845, pt. 1, p. 3 (1984) (emphasis added).
>
> This passage suggests, at the very least, congressional frustration with the diversion of large amounts of forfeitable assets to pay attorney's fees. It certainly does not suggest an intent on Congress' part to exempt from forfeiture such fees.

Respondent claims support from only one piece of pre-enactment legislative history: a footnote in the same House Report quoted above, which [491 U.S. 600, 609] discussed the newly proposed provision for pretrial restraint on forfeitable assets. The footnote stated that:

> "Nothing in this section is intended to interfere with a person's Sixth Amendment right to counsel. The Committee, therefore, does not resolve the conflict in District Court opinions on the use of restraining orders that impinge on a person's right to retain counsel in a criminal case." Id., at 19, n. 1.

> Respondent argues that the Committee's disclaimer of any interest in resolving the conflict among the District Courts indicates the Committee's understanding that the statute would not be employed to freeze assets that might be used to pay legitimate attorney's fees. See Brief for Respondent 14, and n. 8.

This ambiguous passage however, can be read for the opposite proposition as well, as the Report expressly refrained from disapproving of cases where pretrial restraining orders similar to the one issued here were imposed. See H. R. Rep. No. 98-845, supra, at 19, n. 1 (citing United States v. Bello, 470 F. Supp. 723, 724-725 (SD Cal. 1979)). Moreover, the Committee's statement that the statute should not be applied in a manner contrary to the Sixth Amendment appears to be nothing more than an exhortation for the courts to tread carefully in this delicate area.

[Footnote 9] See, e. g., Attorneys' Fees Forfeiture: Hearing before the Senate Committee on the Judiciary, 99th Cong., 2d Sess., 148-213 (1986); Forfeiture Issues: Hearing before the Subcommittee on Crime of the House Committee on the Judiciary, 99th Cong., 1st Sess., 187-242 (1985).

[Footnote 10] We do not consider today, however, whether the Due Process Clause requires a hearing before a pretrial restraining order can be imposed. As noted above, in its initial consideration of this case, a panel of the Second Circuit ordered that such a hearing be held before permitting the entry of a restraining order; on remand, the District Court held an extensive, 4-day hearing on the question of probable cause.

Though the United States petitioned for review of the Second Circuit's holding that such a hearing was required, see Pet. for Cert. I, given that the Government prevailed in the District Court notwithstanding the hearing, it would be pointless for us now to consider whether a hearing was required by the Due Process Clause. Furthermore, because the Court of Appeals, in its en banc decision, did not address the procedural due process issue, we also do not inquire whether the hearing - if a hearing was required at all - was an adequate one. [491 U.S. 600, 617]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT *v.* RUCKER *et al.*

certiorari to the united states court of appeals for the ninth circuit

No. 00-1770. Argued February 19, 2002--Decided March 26, 2002[*]

Title 42 U. S. C. §1437d(*l*)(6) provides that each "public housing agency shall utilize leases ... provid[ing] that ... any drug-related criminal activity on or off [federally assisted low-income housing] premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be

cause for termination of tenancy." Respondents are four such tenants of the Oakland Housing Authority (OHA). Paragraph 9(m) of their leases obligates them to "assure that the tenant, any member of the household, a guest, or another person under the tenant's control, shall not engage in ... any drug-related criminal activity on or near the premises." Pursuant to United States Department of Housing and Urban Development (HUD) regulations authorizing local public housing authorities to evict for drug-related activity even if the tenant did not know, could not foresee, or could not control behavior by other occupants, OHA instituted state-court eviction proceedings against respondents, alleging violations of lease paragraph 9(m) by a member of each tenant's household or a guest. Respondents filed federal actions against HUD, OHA, and OHA's director, arguing that §1437d(*l*)(6) does not require lease terms authorizing the eviction of so-called "innocent" tenants, and, in the alternative, that if it does, the statute is unconstitutional. The District Court's issuance of a preliminary injunction against OHA was affirmed by the en banc Ninth Circuit, which held that HUD's interpretation permitting the eviction of so-called "innocent" tenants is inconsistent with congressional intent and must be rejected under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U. S. 837, 842-843.

Held: Section 1437d(*l*)(6)'s plain language unambiguously requires lease terms that give local public housing authorities the discretion to terminate the lease of a tenant when a member of the household or a guest engages in drug-related activity, regardless of whether the tenant knew, or should have known, of the drug-related activity. Congress' decision not to impose any qualification in the statute, combined with its use of the term "any" to modify "drug-related criminal activity," precludes any knowledge requirement. See *United States* v. *Monsanto,* 491 U. S. 600, 609. Because "any" has an expansive meaning--*i.e.,* "one or some indiscriminately of whatever kind ," *United States* v. *Gonzales,* 520 U. S. 1, 5--*any* drug-related activity engaged in by the specified persons is grounds for termination, not just drug-related activity that the tenant knew, or should have known, about. The Ninth Circuit's ruling that "under the tenant's control" modifies not just "other person," but also "member of the tenant's household" and "guest," runs counter to basic grammar rules and would result in a nonsensical reading. Rather, HUD offers a convincing explanation for the grammatical imperative that "under the tenant's control" modifies only "other person": By "control," the statute means control in the sense that the tenant has permitted access to the premises. Implicit in the terms "household member" or "guest" is that access to the premises has been granted by the tenant. Section §1437d(*l*)(6)'s unambiguous text is reinforced by comparing it to 21 U. S. C. §881(a)(7), which subjects all leasehold interests to civil forfeiture when used to commit drug-related criminal activities, but expressly exempts tenants who had no knowledge of the activity, thereby demonstrating that Congress knows exactly how to provide an "innocent owner" defense. It did not provide one in §1437d(*l*)(6). Given that Congress has directly spoken to the precise question at issue, *Chevron, supra,* at 842, other considerations with which the Ninth Circuit attempted to bolster its holding are unavailing, including the legislative history, the erroneous conclusion that the plain reading of the statute leads to absurd results, the canon of constitutional avoidance, and reliance on inapposite decisions of this Court to cast doubt on §1437d(*l*)(6)'s constitutionality under the Due Process Clause. Pp. 4-11.

237 F. 3d 1113, reversed and remanded.

Rehnquist, C. J., delivered the opinion of the Court, in which all other Members joined, except *Breyer, J.,* who took no part in the consideration or decision of the cases.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PETITIONER

00-1770 *v.*

PEARLIE RUCKER *et al.*

OAKLAND HOUSING AUTHORITY, *et al.,* PETITIONERS

00-1781 *v.*

PEARLIE RUCKER *et al.*

on writs of certiorari to the united states court of appeals for the ninth circuit

[March 26, 2002]

Chief Justice Rehnquist delivered the opinion of the Court.

With drug dealers "increasingly imposing a reign of terror on public and other federally assisted low-income housing tenants," Congress passed the Anti-Drug Abuse Act of 1988. §5122, 102 Stat. 4301, 42 U. S. C. §11901(3) (1994 ed.). The Act, as later amended, provides that each "public housing agency shall utilize leases which ... provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy." 42 U. S. C. §1437d(*l*)(6) (1994 ed., Supp. V). Petitioners say that this statute requires lease terms that allow a local public housing authority to evict a tenant when a member of the tenant's household or a guest engages in drug-related criminal activity, regardless of whether the tenant knew, or had reason to know, of that activity. Respondents say it does not. We agree with petitioners.

Respondents are four public housing tenants of the Oakland Housing Authority (OHA). Paragraph 9(m) of respondents' leases, tracking the language of §1437d(*l*)(6), obligates the tenants to "assure that the tenant, any member of the household, a guest, or

another person under the tenant's control, shall not engage in ... [a]ny drug-related criminal activity on or near the premise[s]." App. 59. Respondents also signed an agreement stating that the tenant "understand[s] that if I or any member of my household or guests should violate this lease provision, my tenancy may be terminated and I may be evicted." *Id.,* at 69.

In late 1997 and early 1998, OHA instituted eviction proceedings in state court against respondents, alleging violations of this lease provision. The complaint alleged: (1) that the respective grandsons of respondents William Lee and Barbara Hill, both of whom were listed as residents on the leases, were caught in the apartment complex parking lot smoking marijuana; (2) that the daughter of respondent Pearlie Rucker, who resides with her and is listed on the lease as a resident, was found with cocaine and a crack cocaine pipe three blocks from Rucker's apartment;[1] and (3) that on three instances within a 2-month period, respondent Herman Walker's caregiver and two others were found with cocaine in Walker's apartment. OHA had issued Walker notices of a lease violation on the first two occasions, before initiating the eviction action after the third violation.

United States Department of Housing and Urban Development (HUD) regulations administering §1437d(*l*)(6) require lease terms authorizing evictions in these circumstances. The HUD regulations closely track the statutory language,[2] and provide that "[i]n deciding to evict for criminal activity, the [public housing authority] shall have discretion to consider all of the circumstances of the case ... ." 24 CFR §966.4(*l*)(5)(i) (2001). The agency made clear that local public housing authorities' discretion to evict for drug-related activity includes those situations in which "[the] tenant did not know, could not foresee, or could not control behavior by other occupants of the unit." 56 Fed. Reg. 51560, 51567 (1991).

After OHA initiated the eviction proceedings in state court, respondents commenced actions against HUD, OHA, and OHA's director in United States District Court. They challenged HUD's interpretation of the statute under the Administrative Procedure Act, 5 U. S. C. §706(2)(A), arguing that 42 U. S. C. §1437d(*l*)(6) does not require lease terms authorizing the eviction of so-called "innocent" tenants, and, in the alternative, that if it does, then the statute is unconstitutional.[3] The District Court issued a preliminary injunction, enjoining OHA from "terminating the leases of tenants pursuant to paragraph 9(m) of the ` Tenant Lease' for drug-related criminal activity that does not occur within the tenant's apartment unit when the tenant did not know of and had no reason to know of, the drug-related criminal activity." App. to Pet. for Cert. in No. 01-770, pp. 165a-166a.

A panel of the Court of Appeals reversed, holding that §1437d(*l*)(6) unambiguously permits the eviction of tenants who violate the lease provision, regardless of whether the tenant was personally aware of the drug activity, and that the statute is constitutional. See *Rucker* v. *Davis,* 203 F. 3d 627 (CA9 2000). An en banc panel of the Court of Appeals reversed and affirmed the District Court's grant of the preliminary injunction. See *Rucker* v. *Davis,* 237 F. 3d 1113 (2001). That court held that HUD's interpretation permitting the eviction of so-called "innocent" tenants "is inconsistent with Congressional intent and

must be rejected" under the first step of *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U. S. 837, 842-843 (1984). 237 F. 3d, at 1119.

We granted certiorari, 533 U. S. 976 (2001), 534 U. S. ___ (2001), and now reverse, holding that 42 U. S. C. §1437d(*l*)(6) unambiguously requires lease terms that vest local public housing authorities with the discretion to evict tenants for the drug-related activity of household members and guests whether or not the tenant knew, or should have known, about the activity.

That this is so seems evident from the plain language of the statute. It provides that "each public housing authority shall utilize leases which ... provide that ... any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy." 42 U. S. C. §1437d(*l*)(6) (1994 ed., Supp. V). The en banc Court of Appeals thought the statute did not address "the level of personal knowledge or fault that is required for eviction." 237 F. 3d, at 1120. Yet Congress' decision not to impose any qualification in the statute, combined with its use of the term "any" to modify "drug-related criminal activity," precludes any knowledge requirement. See *United States* v. *Monsanto,* 491 U. S. 600, 609 (1989). As we have explained, "the word `any' has an expansive meaning, that is, `one or some indiscriminately of whatever kind.' " *United States* v. *Gonzales,* 520 U. S. 1, 5 (1997). Thus, *any* drug-related activity engaged in by the specified persons is grounds for termination, not just drug-related activity that the tenant knew, or should have known, about.

The en banc Court of Appeals also thought it possible that "under the tenant's control" modifies not just "other person," but also "member of the tenant's household" and "guest." 237 F. 3d, at 1120. The court ultimately adopted this reading, concluding that the statute prohibits eviction where the tenant "for a lack of knowledge or other reason, could not realistically exercise control over the conduct of a household member or guest." *Id.,* at 1126. But this interpretation runs counter to basic rules of grammar. The disjunctive "or" means that the qualification applies only to "other person." Indeed, the view that "under the tenant's control" modifies everything coming before it in the sentence would result in the nonsensical reading that the statute applies to "a public housing tenant ... under the tenant's control." HUD offers a convincing explanation for the grammatical imperative that "under the tenant's control" modifies only "other person": "by `control,' the statute means control in the sense that the tenant has permitted access to the premises." 66 Fed. Reg. 28781 (2001). Implicit in the terms "household member" or "guest" is that access to the premises has been granted by the tenant. Thus, the plain language of §1437d(*l*)(6) requires leases that grant public housing authorities the discretion to terminate tenancy without regard to the tenant's knowledge of the drug-related criminal activity.

Comparing §1437d(*l*)(6) to a related statutory provision reinforces the unambiguous text. The civil forfeiture statute that makes all leasehold interests subject to forfeiture when used to commit drug-related criminal activities expressly exempts tenants who had no knowledge of the activity: "[N]o property shall be forfeited under this paragraph ... by

reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of the owner." 21 U. S. C. §881(a)(7) (1994 ed.). Because this forfeiture provision was amended in the same Anti-Drug Abuse Act of 1988 that created 42 U. S. C. §1437d(*l*)(6), the en banc Court of Appeals thought Congress "meant them to be read consistently" so that the knowledge requirement should be read into the eviction provision. 237 F. 3d, at 1121-1122. But the two sections deal with distinctly different matters. The "innocent owner" defense for drug forfeiture cases was already in existence prior to 1988 as part of 21 U. S. C. §881(a)(7). All that Congress did in the 1988 Act was to add leasehold interests to the property interests that might be forfeited under the drug statute. And if such a forfeiture action were to be brought against a leasehold interest, it would be subject to the pre-existing "innocent owner" defense. But 42 U. S. C. §1437(d)(1)(6), with which we deal here, is a quite different measure. It is entirely reasonable to think that the Government, when seeking to transfer private property to itself in a forfeiture proceeding, should be subject to an "innocent owner defense," while it should not be when acting as a landlord in a public housing project. The forfeiture provision shows that Congress knew exactly how to provide an "innocent owner" defense. It did not provide one in §1437d(*l*)(6).

The en banc Court of Appeals next resorted to legislative history. The Court of Appeals correctly recognized that reference to legislative history is inappropriate when the text of the statute is unambiguous. 237 F. 3d, at 1123. Given that the en banc Court of Appeals' finding of textual ambiguity is wrong, see *supra*, at 4-6, there is no need to consult legislative history.[4]

Nor was the en banc Court of Appeals correct in concluding that this plain reading of the statute leads to absurd results.[5] The statute does not *require* the eviction of any tenant who violated the lease provision. Instead, it entrusts that decision to the local public housing authorities, who are in the best position to take account of, among other things, the degree to which the housing project suffers from "rampant drug-related or violent crime," 42 U. S. C. §11901(2) (1994 ed. and Supp. V), "the seriousness of the offending action," 66 Fed. Reg., at 28803, and "the extent to which the leaseholder has ... taken all reasonable steps to prevent or mitigate the offending action," *ibid.* It is not "absurd" that a local housing authority may sometimes evict a tenant who had no knowledge of the drug-related activity. Such "no-fault" eviction is a common "incident of tenant responsibility under normal landlord-tenant law and practice." 56 Fed. Reg., at 51567. Strict liability maximizes deterrence and eases enforcement difficulties. See *Pacific Mut. Life Ins. Co.* v. *Haslip,* 499 U. S. 1, 14 (1991).

And, of course, there is an obvious reason why Congress would have permitted local public housing authorities to conduct no-fault evictions: Regardless of knowledge, a tenant who "cannot control drug crime, or other criminal activities by a household member which threaten health or safety of other residents, is a threat to other residents and the project." 56 Fed. Reg., at 51567. With drugs leading to "murders, muggings, and other forms of violence against tenants," and to the "deterioration of the physical environment that requires substantial governmental expenditures," 42 U. S. C. §11901(4) (1994 ed., Supp. V), it was reasonable for Congress to permit no-fault evictions in order

to "provide public and other federally assisted low-income housing that is decent, safe, and free from illegal drugs," §11901(1) (1994 ed.).

In another effort to avoid the plain meaning of the statute, the en banc Court of Appeals invoked the canon of constitutional avoidance. But that canon "has no application in the absence of statutory ambiguity." *United States* v. *Oakland Cannabis Buyers' Cooperative*, 532 U. S. 483, 494 (2001). "Any other conclusion, while purporting to be an exercise in judicial restraint, would trench upon the legislative powers vested in Congress by Art. I, §1, of the Constitution." *United States* v. *Albertini*, 472 U. S. 675, 680 (1985). There are, moreover, no "serious constitutional doubts" about Congress' affording local public housing authorities the discretion to conduct no-fault evictions for drug-related crime. *Reno* v. *Flores,* 507 U. S. 292, 314, n. 9 (1993) (emphasis deleted).

The en banc Court of Appeals held that HUD's interpretation "raise[s] serious questions under the Due Process Clause of the Fourteenth Amendment," because it permits "tenants to be deprived of their property interest without any relationship to individual wrongdoing." 237 F. 3d, at 1124-1125 (citing *Scales* v. *United States*, 367 U. S 203, 224-225 (1961); *Southwestern Telegraph & Telephone Co.* v. *Danaher,* 238 U. S. 482 (1915)). But both of these cases deal with the acts of government as sovereign. In *Scales*, the United States criminally charged the defendant with knowing membership in an organization that advocated the overthrow of the United States Government. In *Danaher*, an Arkansas statute forbade discrimination among customers of a telephone company. The situation in the present cases is entirely different. The government is not attempting to criminally punish or civilly regulate respondents as members of the general populace. It is instead acting as a landlord of property that it owns, invoking a clause in a lease to which respondents have agreed and which Congress has expressly required. *Scales* and *Danaher* cast no constitutional doubt on such actions.

The Court of Appeals sought to bolster its discussion of constitutional doubt by pointing to the fact that respondents have a property interest in their leasehold interest, citing *Greene* v. *Lindsey,* 456 U. S. 444 (1982). This is undoubtedly true, and *Greene* held that an effort to deprive a tenant of such a right without proper notice violated the Due Process Clause of the Fourteenth Amendment. But, in the present cases, such deprivation will occur in the state court where OHA brought the unlawful detainer action against respondents. There is no indication that notice has not been given by OHA in the past, or that it will not be given in the future. Any individual factual disputes about whether the lease provision was actually violated can, of course, be resolved in these proceedings.[6]

We hold that "Congress has directly spoken to the precise question at issue." *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U. S., at 842. Section 1437d(*l*)(6) requires lease terms that give local public housing authorities the discretion to terminate the lease of a tenant when a member of the household or a guest engages in drug-related activity, regardless of whether the tenant knew, or should have known, of the drug-related activity.

Accordingly, the judgment of the Court of Appeals is reversed, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice Breyer took no part in the consideration or decision of these cases.

FOOTNOTES

Footnote *

Together with No. 00-1781, *Oakland Housing Authority et al.* v. *Rucker et al.,* also on certiorari to the same court.

FOOTNOTES

Footnote 1

In February 1998, OHA dismissed the unlawful detainer action against Rucker, after her daughter was incarcerated, and thus no longer posed a threat to other tenants.

Footnote 2

The regulations require public housing authorities (PHAs) to impose a lease obligation on tenants:

"To assure that the tenant, any member of the household, a guest, or another person under the tenant's control, shall not engage in:

"(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA, or

"(B) Any drug-related criminal activity on or near such premises.

Any criminal activity in violation of the preceding sentence shall be cause for termination of tenancy, and for eviction from the unit." 24 CFR §966.4(f)(12)(i) (2001).

Footnote 3

Respondents Rucker and Walker also raised Americans with Disabilities Act claims that are not before this Court. And all of the respondents raised state-law claims against OHA that are not before this Court.

Footnote 4

Even if it were appropriate to look at legislative history, it would not help respondents. The en banc Court of Appeals relied on two passages from a 1990 Senate Report on a proposed amendment to the eviction provision. 237 F. 3d, at 1123 (citing S. Rep. No. 101-316 (1990)). But this Report was commenting on language from a Senate version of the 1990 amendment, which was never enacted. The language in the Senate version, which would have imposed a different standard of cause for eviction for drug-related crimes than the unqualified language of §1437d(*l*)(6), see 136 Cong. Rec. 15991, 16012 (1990) (reproducing S. 566, 101st Cong., 2d Sess., §§521(f) and 714(a) (1990)), was rejected at Conference. See H. R. Conf. Rep. No. 101-943, p. 418 (1990). And, as the dissent from the en banc decision below explained, the passages may plausibly be read as a mere suggestion about how local public housing authorities should exercise the "*wide* discretion to evict tenants connected with drug-related criminal behavior" that the lease provision affords them. 237 F. 3d, at 1134 (Sneed, J., dissenting).

Respondents also cite language from a House Report commenting on the Civil Asset Forfeiture Reform Act of 2000, codified at 18 U. S. C. §983. Brief for Respondents 15-16. For the reasons discussed *supra* at 6-7, legislative history concerning forfeiture provisions is not probative on the interpretation of §1437d(*l*)(6).

A 1996 amendment to §1437d(*l*)(6), enacted five years after HUD issued its interpretation of the statute, supports our holding. The 1996 amendment expanded the reach of §1437d(*l*)(6), changing the language of the lease provision from applying to activity taking place "on or near" the public housing premises, to activity occurring "on or off" the public housing premises. See Housing Opportunity Program Extension Act of 1996, §9(a)(2), 110 Stat. 836. But Congress, "presumed to be aware" of HUD's interpretation rejecting a knowledge requirement, made no other change to the statute. *Lorillard* v. *Pons,* 434 U. S. 575, 580 (1978).

Footnote 5

For the reasons discussed above, no-fault eviction, which is specifically authorized under §1437d(*l*)(6), does not violate §1437d(*l*)(2), which prohibits public housing authorities from including "unreasonable terms and conditions [in their leases]." In addition, the general statutory provision in the latter section cannot trump the clear language of the more specific §1437d(*l*)(6). See *Green* v. *Bock Laundry Machine Co.,* 490 U. S. 504, 524-526 (1989).

Footnote 6

The en banc Court of Appeals cited only the due process constitutional concern. Respondents raise two others: the First Amendment and the Excessive Fines Clause. We agree with Judge O'Scannlain, writing for the panel that reversed the injunction, that the statute does not raise substantial First Amendment or Excessive Fines Clause concerns. *Lyng* v. *Automobile Workers,* 485 U. S. 360 (1988), forecloses respondents claim that the eviction of unknowing tenants violates the First Amendment guarantee of freedom of association. See *Rucker* v. *Davis,* 203 F. 3d 627, 647 (2000). And termination of tenancy "is neither a cash nor an in-kind payment imposed by and payable to the government" and therefore is "not subject to analysis as an excessive fine." *Id.,* at 648.