No. 24-796

In the Supreme Court of the United States

STATE OF MISSOURI, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court correctly enjoined the State of Missouri and its officers from enforcing the State's Second Amendment Preservation Act, Mo. Rev. Stat. §§ 1.410-1.485.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-12a) is reported at 114 F.4th 980. The opinion and order of the district court (Pet. App. 13a-44a) is reported at 660 F. Supp. 3d 791. The order of this Court denying a stay pending appeal (Pet. App. 47a-48a) is reported at 144 S. Ct. 7. The order of the court of appeals denying a stay pending appeal (Pet. App. 49a-50a) is available at 2023 WL 6543287.

JURISDICTION

The judgment of the court of appeals was entered on August 26, 2024. On November 14, 2024, Justice Kavanaugh extended the time within which to file a petition for a writ of certiorari to and including January 23, 2025, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 2021, the Missouri General Assembly enacted the Second Amendment Preservation Act (Act), Mo. Rev. Stat. §§ 1.410-1.485. The Act declares that Missouri retains the power to "judge for itself" the constitutionality of federal laws, to declare federal laws "unauthoritative, void, and of no force," and to determine the proper "redress" for federal "infractions" of the Constitution. *Id.* § 1.410.2(4) and (5).

Section 1.420 of the Act states that certain "federal acts" "shall be considered infringements on the people's right to keep and bear arms, as guaranteed by" the Second Amendment and by a corresponding provision of the Missouri constitution. Mo. Rev. Stat. § 1.420. Those acts include (1) "[a]ny tax" that "might reasonably be expected to create a chilling effect on the purchase or ownership" of firearms; (2) "[a]ny registration or tracking of firearms"; (3) "[a]ny registration or tracking of the ownership of firearms"; (4) "[a]ny act forbidding the possession" of a firearm "by law-abiding citizens"; and (5) "[a]ny act ordering the confiscation of firearms * * * from law-abiding citizens." *Ibid.* The Act defines "law-abiding citizen" to mean "a person who is not * * * precluded under *state* law from possessing a firearm." *Id.* § 1.480.1 (emphasis added).

The Act declares that the federal laws identified in Section 1.420 "shall be invalid to this state, shall not be recognized by this state, shall be specifically rejected by this state, and shall not be enforced by this state." Mo. Rev. Stat. § 1.430. The Act also makes it "the duty of the courts and law enforcement agencies of this state to protect" Missourians against the federal laws identified in Section 1.420. *Id.* § 1.440.

The Act additionally provides that "[n]o entity or person" "shall have the authority to enforce or attempt to enforce any federal acts" listed in Section 1.420. Mo. Rev. Stat. § 1.450. If a state law-enforcement agency or political subdivision employs a law-enforcement officer who knowingly enforces or attempts to enforce such a federal statute, an injured party may sue the agency or subdivision for damages, equitable relief, and "a civil penalty of fifty thousand dollars per occurrence." *Id.* § 1.460.1. That penalty applies even with respect to state officers who have been deputized to act "under the color of * * * federal law." *Ibid.*

Finally, the Act prohibits state law-enforcement agencies and political subdivisions from employing any person who, as a federal official or employee, has ever "[e]nforced," "attempted to enforce," or "[g]iven material aid and support" to the enforcement of the specified federal laws. Mo. Rev. Stat. § 1.470.1. An agency or subdivision that knowingly hires such a former federal employee is "subject to a civil penalty of fifty thousand dollars per employee hired," *ibid.*, and "[a]ny person residing in [the] jurisdiction" may sue to recover that penalty, *ibid.*

2. In 2022, the United States sued petitioners (the State of Missouri, the Governor of Missouri, and the Missouri Attorney General) in federal district court. See Pet. App. 5a, 13a-14a. The United States sought a declaration that the Act is unconstitutional and an injunction against the Act's implementation and enforcement by the State. See *id.* at 14a.

In March 2023, the district court granted the United States' motion for summary judgment. Pet. App. 13a-44a. The court first rejected Missouri's argument that the United States lacked Article III standing. See *id.*

at 15a-20a. The court determined that the Act caused the United States multiple injuries, including interference with "law enforcement operations" and "discrimination against federal employees." *Id.* at 17a-18a.

Turning to the merits, the district court held that the Act violates the Constitution in three ways. See Pet. App. 31a-43a. First, the court determined that the Act violates the Supremacy Clause by purporting to invalidate federal statutes. See *id.* at 31a-34a. Second, the court determined that the Act conflicts with, and thus is preempted by, the federal firearms statutes that it purports to invalidate. See *id.* at 34a-38a. Third, the court determined that the Act violates intergovernmental immunity by regulating and discriminating against the federal government. See *id.* at 40a-42a.

Applying state-law severability rules, the district court held that the Act was invalid in its entirety. See Pet. App. 38a-40a, 42a-43a. The court enjoined Missouri from enforcing the Act. See *id.* at 43a-44a.

The district court, the Eighth Circuit, and this Court all denied Missouri's request for a stay pending appeal. See D. Ct. Doc. 96, at 1 (Mar. 9, 2023); Pet. App. 47a-50a. Justice Gorsuch, joined by Justice Alito, concurred in this Court's denial of a stay on the understanding that the district court's injunction did not purport to bind private parties not before the district court or to enjoin the challenged provisions themselves. See Pet. App. 47a-48a. Justice Thomas would have granted a stay. See *id.* at 47a.

3. The Eighth Circuit affirmed. Pet. App. 1a-12a.

The court of appeals first held that the United States had Article III standing. See Pet. App. 6a-9a. The court determined that the Act injured the United States by impairing its "legally protected interest in enforcing

federal law," and that injunctive relief would redress that injury by "prevent[ing] state officials from treating federal law as invalid." *Id.* at 6a-7a.

The court of appeals also rejected petitioners' claim that the United States lacks a cause of action. See Pet. App. 9a-10a. The court relied on the "equitable tradition of suits to enjoin unconstitutional actions by state actors." *Id.* at 9a (citing *Armstrong* v. *Exceptional Child Center, Inc.*, 575 U.S. 320, 326-327 (2015)).

On the merits, the court of appeals determined that the Act violates the Supremacy Clause. See Pet. App. 9a. The court accepted that "Missouri may lawfully withhold its assistance from federal law enforcement." *Id.* at 10a. But it determined that Missouri could not do so "by purporting to invalidate federal law." *Ibid.* Applying state-law severability principles, the court then concluded that the entire Act was invalid. See *id.* at 10a-12a.

ARGUMENT

Petitioners argue (Pet. 12-37) that the United States lacks Article III standing to challenge the Act, that the United States lacks a cause of action, and that the Act complies with the Constitution. None of those contentions is correct. The United States plainly has Article III standing and a cause of action to litigate the claim that the Act is unconstitutional, because the Act discriminates against federal officials and impairs the enforcement of federal laws. And for the same reason, at least some of the Act's provisions clearly violate the Supremacy Clause. Missouri also misstates the Eighth Circuit's holding, claiming that the court held that the State lost its Tenth Amendment right not to enforce federal gun laws merely because the State's "reason" or "motiv[e]" for invoking that right was the belief that

those laws violated the Second Amendment. See Pet. i. Rather, the Eighth Circuit held that Missouri went beyond non-enforcement by using the improper "means" of "purporting to invalidate federal law." Pet. App. 10a.

That said, while Missouri's objections are flawed, the constitutionality of some of the Act's provisions raises more difficult questions than the Eighth Circuit recognized. And following the change in Administration, the United States has decided it no longer wishes to challenge those provisions in this pre-enforcement posture. Accordingly, once the district court regains jurisdiction over the case, the United States would not oppose a motion by Missouri under Federal Rule of Civil Procedure 60(b) asking the district court to narrow the scope of relief because the United States is releasing its judgment in part. In these circumstances, where the State's arguments are meritless and the potentially problematic aspects of the judgment lack prospective significance, the petition for a writ of certiorari should be denied.

1. Petitioners argue (Pet. 19-23) that the United States lacks Article III standing. That is incorrect. Whether or not the claim that the Act is unconstitutional is correct on the merits, the United States plainly has standing to bring that claim, because the Act injures the federal government in multiple ways. For example:

- The Act prohibits state law-enforcement agencies and political subdivisions from employing any person who, as a federal officer or employee, enforced the specified federal firearms laws. Mo. Rev. Stat. § 1.470.1. That provision injures the United States by deterring people from accepting federal employment and by discouraging federal employees from enforcing federal law.

- The Act punishes deputized state and local officers who, while acting under color of federal law, enforce the specified federal firearms laws. See Mo. Rev. Stat. § 1.460.1. That provision injures the United States by interfering with the execution of federal law.
- The Act makes it unlawful for state agencies to assist in the enforcement of the specified federal laws. See Mo. Rev. Stat. § 1.430. That provision injures the United States by withholding a benefit (law-enforcement assistance) that the State had previously provided.

Petitioners respond (Pet. 19) that the State's withdrawal of law-enforcement assistance does not injure the United States because the United States lacks "an Article III interest in Missouri officials expending Missouri resources to help federal law enforcement." But as the Eighth Circuit correctly observed, "[t]hat argument confuses standing with the merits of the dispute." Pet. App. 7a. Just as the United States injures a State by withdrawing funding that it chose to provide, see, *e.g.*, *Department of Commerce* v. *New York*, 588 U.S. 752, 767 (2019), a State injures the United States by withdrawing law-enforcement assistance that it chose to provide. Whether the withdrawal is permissible under the anti-commandeering doctrine goes to the merits, not standing. See *Davis* v. *United States*, 564 U.S. 229, 249 n.10 (2011). In any event, as discussed above, the Act injures the United States not only by withdrawing assistance but also in other ways.

Petitioners also argue (Pet. 21-23) that the Act can be enforced only through private-citizen suits and that the United States thus cannot show that Missouri caused its injuries or that an injunction running against

the State and its officials would redress those injuries. That, too, is wrong. The Act directs the conduct of state officials by prohibiting them from engaging in specified activities (such as hiring certain former federal employees and assisting in the enforcement of the specified federal laws). See, *e.g.*, Mo. Rev. Stat. §§ 1.430, 1.470.1. State officials have a state-law obligation to carry out those directives, regardless of whether private citizens sue them to secure compliance. State officials' execution of those directives injures the United States, and the injunction preventing them from executing those directives redresses those injuries, at least in part.

To be sure, the injunction does not run against private parties and so cannot prevent the filing of private suits against state officials who stop complying with the Act's directives in light of the injunction. But it is quite unlikely that such private suits would lead state officials to comply with the Act in violation of the injunction, given the threat of contempt penalties. And regardless, "uncertainty" about whether a defendant may "choose[] to defy" an injunction "does not typically" defeat redressability, which focuses instead on whether *compliance* with the injunction would remedy the plaintiff's injuries. *Chafin* v. *Chafin*, 568 U.S. 165, 175 (2013). At a minimum, the injunction is likely to cause at least some state officials to refrain from complying with the Act in at least some circumstances, which is "a partial remedy" that is sufficient to "satisf[y] the redressability requirement." *Uzuegbunam* v. *Preczewski*, 592 U.S. 279, 291 (2021); accord *Chafin*, 568 U.S. at 175.

2. Petitioners separately argue (Pet. 23-27) that the United States lacks a cause of action. But it is well-established that a plaintiff may seek equitable relief to prevent a state actor's violation of the Constitution.

See, *e.g.*, *Armstrong* v. *Exceptional Child Center, Inc.*, 575 U.S. 320, 326-327 (2015); *Ex parte Young*, 209 U.S. 123, 150-151 (1908). That principle permits suits not only by private plaintiffs, but also by the United States. See, *e.g.*, *United States* v. *Washington*, 596 U.S. 832, 837 (2022); *Arizona* v. *United States*, 567 U.S. 387, 394 (2012); *United States* v. *Minnesota*, 270 U.S. 181, 194 (1926); *Sanitary District* v. *United States*, 266 U.S. 405, 425-426 (1925). Indeed, petitioners conceded below that the United States "has an equitable cause of action that allows federal courts to 'grant injunctive relief against state officers who are violating, or planning to violate, federal law.'" Pet. D. Ct. Mot. to Dismiss 13-14 (citation and emphasis omitted).

Petitioners argue (Pet. 23-25) that the United States may not bring an equitable action against the Governor and Attorney General of Missouri because, rather than wielding "enforcement authority" under the Act, they are "regulated parties" who must "mere[ly] compl[y] with the Act." That is an immaterial distinction. For purposes of a federal court's equitable authority, the relevant question is whether state officials "are violating, or planning to violate, federal law." *Armstrong*, 575 U.S. at 326. If so, they can be enjoined regardless of their *reasons* for doing so—whether they are exercising enforcement discretion or instead acting pursuant to regulatory compulsion. Petitioners' contrary position would lead to absurd results. Imagine, for example, that a State "regulated" local fire departments by prohibiting them from providing services to racial minorities, while vesting private citizens with authority to "enforce" that discriminatory regulation. Surely the targets of that unconstitutional law could seek injunctive

relief prohibiting local fire departments from discriminating against them pursuant to it. So too in this case.

The State's emphasis on the individual petitioners' lack of "enforcement authority" is particularly flawed because the cases it cites involved suits only against individual officers. Such cases properly focus on the particular connection between the named officials and the challenged law. See, *e.g.*, *Free Speech Coalition, Inc.* v. *Anderson*, 119 F.4th 732, 736 (10th Cir. 2024). By contrast, here, the United States named the State of Missouri itself as a defendant. See Pet. App. 5a. The United States thus appropriately secured injunctive relief that runs against state officials who could apply the Act's unconstitutional provisions. See Fed. R. Civ. P. 65(d)(2)(A) and (B) (an injunction binds "the parties" as well as "the parties' officers, agents, servants, employees, and attorneys").

Contrary to petitioners' suggestion (Pet. 25-27), no legal obstacle precludes the United States from suing, and obtaining an injunction against, a State. A private party, of course, may not sue a State without its consent because of sovereign immunity; rather, private parties must sue state officers under *Ex parte Young*. But sovereign immunity does not shield States from suits by the United States or other States. See *United States* v. *Mississippi*, 380 U.S. 128, 140-141 (1965). And when the United States or a State sues another State, a federal court may properly issue an injunction against the defendant State, including its officials. See, *e.g.*, *New York* v. *New Jersey*, 598 U.S. 218, 223 (2023); *United States* v. *Texas*, 340 U.S. 900, 900-901 (1950). Moreover, the injunction here runs only against the State; the district court did not purport to "'enjoin the world at large'" or to "enjoin challenged 'laws themselves.'"

Whole Woman's Health v. *Jackson*, 595 U.S. 30, 44 (2021) (citation omitted); see Pet. App. 47a-48a (Gorsuch, J., concurring).

Petitioners err in contending (Pet. 15-16) that the decision below conflicts with the Fifth Circuit's decision in *United States* v. *Texas*, No. 21-50949, 2021 WL 4786458 (Oct. 14, 2021) (per curiam). In that case, the United States sued Texas to challenge a state abortion statute, and the Fifth Circuit issued an order staying a preliminary injunction pending appeal. *Texas* differs markedly from this case. There, the United States challenged a state law that regulated private abortion providers and that violated the purported rights of private individuals; here, by contrast, the United States is challenging a state law that regulates state officials and that injures the United States itself by interfering with the federal government's execution of federal statutes.

3. Finally, petitioners argue (Pet. 28-34) that the court of appeals erred in holding that the Act violates the Constitution. In the district court, the United States sought and obtained relief that the Act "is unconstitutional in its entirety." Pet. App. 43a. After the change in Administration, the United States has reevaluated its position. The United States remains of the view that some provisions of the Act plainly violate the Constitution. But other provisions present more difficult questions in this pre-enforcement posture, albeit for reasons that differ from petitioners'. As to those provisions, the United States plans to release part of its claim, and not to oppose a motion to narrow the judgment in the district court, after that court regains jurisdiction. That is all the more reason why review by this Court is unwarranted at this juncture.

a. Under the Supremacy Clause, a State may not nullify or seek to obstruct the enforcement of federal law. See, *e.g.*, *Bush* v. *Orleans Parish School Board*, 364 U.S. 500, 501 (1960) (per curiam); *United States* v. *Reynolds*, 235 U.S. 133, 148-149 (1914); *Anderson* v. *Carkins*, 135 U.S. 483, 490 (1890). Under preemption principles, federal law also prevails over state law that conflicts with it. See *Murphy* v. *NCAA*, 584 U.S. 453, 471 (2018). And under the doctrine of intergovernmental immunity, a State may not "regulate the United States directly or discriminate against the Federal Government or those with whom it deals." *Washington*, 596 U.S. at 838 (brackets, citation, and emphasis omitted).

The Act violates those basic constitutional principles. And the violation is indisputable for at least two provisions.

First, the Act prohibits state law-enforcement agencies and political subdivisions from employing any person who, as a federal official or employee, has enforced, attempted to enforce, or given material aid and support to the enforcement of specified federal laws. Mo. Rev. Stat. § 1.470.1. That provision violates intergovernmental immunity by discriminating against federal employees. It also is preempted because it obstructs the specified federal laws by discouraging federal employees from enforcing them.

Second, the Act provides that state officers who are deputized to act "under the color of * * * federal law" may not enforce or attempt to enforce the specified federal firearms laws. Mo. Rev. Stat. § 1.460.1; see *id.* § 1.450. To be sure, a State may choose not to allow its officers to be deputized as federal officials in the first place; under the anti-commandeering doctrine, the fed-

eral government generally may not compel state executive officers to administer federal law. See *Printz* v. *United States*, 521 U.S. 898, 935 (1997). Having chosen to allow an officer to be deputized, however, Missouri may not "affix penalties to acts done under the immediate direction of the national government, and in obedience to its laws." *Tennessee* v. *Davis*, 100 U.S. 257, 263 (1880). By penalizing deputized state officers for actions taken under color of federal law, the Act improperly regulates the federal government in violation of the intergovernmental-immunity doctrine, obstructs the enforcement of federal law, and conflicts with federal law.

Depending on how the Act's provisions are read, the Act may violate the Constitution in other ways as well. The Act provides that "[n]o entity or person" "shall have the authority to enforce or attempt to enforce" the specified federal laws. Mo. Rev. Stat. § 1.450. If that provision is read to prohibit the federal government or its employees from enforcing federal laws, it would plainly violate the constitutional principles discussed above. Invoking constitutional avoidance, however, Missouri has asserted that the clause must be read to apply "only to Missouri entities." 24A476 Reply Br. 6; see Pet. C.A. Reply Br. 25.

The Act also directs state law-enforcement agencies to "protect" Missourians against the specified federal laws. Mo. Rev. Stat. § 1.440. If that provision is read to require state agencies to affirmatively obstruct the enforcement of federal law, it would, again, plainly violate the constitutional principles discussed above. Missouri, however, has contended that the Act does not direct state officials to "obstruct the United States from enforcing its laws." Pet. C.A. Reply Br. 4; see *id.* at 24.

b. Petitioners do not address the foregoing constitutional problems with the Act. Instead, they focus (Pet. 28-34) on whether the Eighth Circuit correctly granted relief with respect to "the entire Act." Pet. App. 11a. Petitioners assert (Pet. 28) that the court "wrongly held that Missouri exercised its Tenth Amendment authority" to "lawfully withhold its assistance from federal law enforcement" "for a forbidden reason"—namely, because "the legislature believes [the specified federal laws] are unconstitutional."

Petitioners, however, mischaracterize the Eighth Circuit's opinion, which instead held the Act unconstitutional because it goes beyond mere non-enforcement "by purporting *to invalidate* federal law." Pet. App. 10a (emphasis added). Rather than focusing on the State's "ends," the court was "concerned with" the State's "means." *Ibid.*

Petitioners respond that the Act's use of the term "invalid" was "just an expression of belief that certain laws are unconstitutional." Pet. 30 (citation omitted). But the Act, by its terms, goes further. After setting forth the State's belief that the specified federal laws are unconstitutional, Mo. Rev. Stat. §§ 1.410, 1.420, the Act's primary operative provision decrees that those laws "shall be invalid to this state, shall not be recognized by this state, shall be specifically rejected by this state, and shall not be enforced by this state," *id.* § 1.430. The Act thus makes clear that, in addition to prohibiting the State from enforcing the specified federal laws, it purports to invalidate and derecognize those laws within Missouri.

To be sure, especially in this pre-enforcement posture, it is less clear how invalidation and derecognition of federal laws might differ from non-enforcement in

practice. It thus is difficult to assess the constitutionality of such applications of the Act in light of the anti-commandeering doctrine. But there are at least some plainly unconstitutional applications. For example, the Act provides that "[i]t shall be the duty of *the courts* * * * to protect the rights of law-abiding citizens to keep and bear arms within the borders of this state and to protect these rights from [the specified federal laws]." Mo. Rev. Stat. § 1.440 (emphasis added). Yet "state courts cannot refuse to apply federal law—a conclusion mandated by the terms of the Supremacy Clause." *Printz*, 521 U.S. at 928. In all events, the Eighth Circuit, applying state-law severability principles, held that "the law is not severable because the entire Act is founded on the invalidity of federal law." Pet. App. 10a. Missouri does not separately challenge the court's interpretation of state severability rules.

Thus, contrary to petitioners' contention (Pet. 12-14), the Eighth Circuit's decision does not conflict with *City of Chicago* v. *Sessions*, 888 F.3d 272 (7th Cir. 2018); *McHenry County* v. *Raoul*, 44 F.4th 581 (7th Cir. 2022); or *United States* v. *California*, 921 F.3d 865 (9th Cir. 2019), cert. denied, 141 S. Ct. 124 (2020). In *Chicago*, the Seventh Circuit upheld a preliminary injunction against the enforcement of federal funding conditions that allegedly compelled state and local law-enforcement authorities to help the federal government enforce immigration laws. See 888 F.3d at 277. In *McHenry County*, the Seventh Circuit upheld a state statute that "prohibit[ed] State agencies and political subdivisions from contracting with the federal government to house immigration detainees." 44 F.4th at 585. And in *California*, the Ninth Circuit upheld a state statute that "limit[ed] the cooperation between state and local law

enforcement and federal immigration authorities." 921 F.3d at 872. None of those cases involved state laws that purported to invalidate and derecognize federal laws, let alone to discriminate against federal employees and regulate state officials while they are deputized to act under color of federal law.

c. All that said, having re-evaluated this case, the United States has concerns about whether the judgment below extends too far and enjoins applications of the Act that do constitute mere non-enforcement of federal law protected under the anti-commandeering doctrine. And those concerns are exacerbated by the uncertainty in this pre-enforcement posture about how certain provisions of the Act will be applied and about whether the provision on which the Eighth Circuit focused is indeed inseverable from the rest of the Act.

Given these concerns, the United States has decided that it would acquiesce in narrowing the scope of the judgment under Federal Rule of Civil Procedure 60(b) when the district court regains jurisdiction over this case. In particular, "the court may relieve a party * * * from a final judgment" if "the judgment has been * * * released * * * or applying it prospectively is no longer equitable." Fed. R. Civ. P. 60(b)(5). The United States intends to release the judgment except as to the Act's plainly unconstitutional provisions identified above (*i.e.*, Mo. Rev. Stat. §§ 1.460 and 1.470, as well as Mo. Rev. Stat. §§ 1.440 and 1.450 to the extent those provisions purport to apply to the federal government or to require state agencies to obstruct the enforcement of federal law). See pp. 12-13, *supra*. The United States would not oppose a motion filed by Missouri under Rule 60(b)(5) to give effect to that partial release.

The concerns raised here by the United States, however, do not warrant this Court's review in this case. The State has not made an argument along these lines in its petition, and the issue arises only due to the unusual scope of Missouri's law. Indeed, if the State wishes to withhold assistance in enforcing federal law, it could amend and limit the Act even under the Eighth Circuit's decision. Meanwhile, for the reasons discussed, petitioners' jurisdictional and merits objections are incorrect, and it is indisputable that the injunction below properly covered at least certain provisions of the Act. Moreover, the Rule 60(b)(5) motion that the United States will not oppose when this case returns to district court will eliminate the prospective significance of any dispute over whether the injunction properly covered the Act's other provisions.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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* The Solicitor General is recused in this case.