(ORDER LIST: 605 U.S.)

TUESDAY, MAY 27, 2025

CERTIORARI -- SUMMARY DISPOSITIONS

23-7541 BARNES, TOMMY D. V. FELIX, ROBERTO, ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of *Barnes* v. *Felix*, 605 U. S. ___ (2025).

24-616 BAUER, BENJAMIN M. V. MARKS, ETHAN D.

The motion of International Municipal Lawyers Association for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eighth Circuit for further consideration in light of *Barnes* v. *Felix*, 605 U. S. ___ (2025).

ORDERS IN PENDING CASES

24M87 MENDOZA, ROSARIO Y. V. RUSH TRUCK CENTERS OF TEXAS, L.P.

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

24M88 HILL, WILLIAM T. V. UNITED STATES

The motion for leave to file a petition for a writ of certiorari with the supplemental appendix under seal is granted.

24-724 HAIN CELESTIAL GROUP, ET AL. V. PALMQUIST, SARAH, ET AL.

The motion of petitioners to dispense with printing the

joint appendix is granted.

24-856 CISCO SYS., INC., ET AL. V. DOE I, ET AL.

The Solicitor General is invited to file a brief in this case expressing the views of the United States.

24-5774 BARRETT, DWAYNE V. UNITED STATES

The motion of petitioner to dispense with printing the joint appendix is granted.

CERTIORARI GRANTED

24-556 FERNANDEZ, JOE V. UNITED STATES

The petition for a writ of certiorari is granted limited to the following question: Whether a combination of "extraordinary and compelling reasons" that may warrant a discretionary sentence reduction under 18 U. S. C. §3582(c)(1)(A) can include reasons that may also be alleged as grounds for vacatur of a sentence under 28 U. S. C. §2255.

CERTIORARI DENIED

24-784 ARCH RESOURCES, INC., ET AL. V. PENNINGTON, ACTING DIR., OWCP

24-865 FORTIN, JOSEPH A. V. DUDEK, COMM'R, SOCIAL SEC.

24-866 CONVERTER MFG., LLC V. TEKNI-PLEX, INC.

24-868 ART AND ANTIQUE DEALERS, ET AL. V. LEFTON, NY ACTING COMM'R, ET AL.

24-874 KELLEY, DOUGLAS A. V. BMO HARRIS BANK NATIONAL ASSN.

24-902 HAMILTON, RUEL M. V. UNITED STATES

24-953 LERNER AND ROWE PC V. BROWN ENGSTRAND & SHELY, ET AL.

24-1002 FUSTOLO, STEVEN C. V. PATRIOT GROUP, LLC

24-1005 YOUNG, NATHAN V. WIAND, BURTON W.

24-1006 ANTOINE, LISA V. OXMOOR PRESERVATION/ONE, LLC

24-1007 AYERS, THOMAS J. V. MARKIEWICZ, JOSEPH, ET AL.

24-1008 RIZZO, JUSTICIA V. COLLINS, SEC. OF VA

24-1012 PHILADELPHIA INDEMNITY INS. CO. V. O'LEARY, MARTIN, ET AL.

24-1014 ORTIZ ROMERO, PEDRO V. PR FISCAL AGENCY, ET AL.

24-1019 KANAM, KURT V. BURGUM, SEC. OF INTERIOR, ET AL.

24-1029 HARRIS, ABRAM J. V. DEPT. OF TRANSPORTATION, ET AL.

24-1038 PATEL, SARSVATKUMAR V. LONG ISLAND UNIV.

24-1045 LOS ANGELES, CA V. PIMENTEL, JESUS, ET AL.

24-1076 SIGLEY, JOHN V. ND FAIRMONT LLC

24-1101 BAHREMAN, ALI V. ALLEGIANT AIR, LLC, ET AL.

24-1103 GLICK, CALEB D. V. AM. BAR ASSN.

24-6158 BRANNAN, ELDEN D. V. UNITED STATES

24-6300 GUTIERREZ, PABLO V. FLORIDA

24-6791 WASHINGTON, LADARRELL C. V. UNITED STATES

24-6808 MAHOMES, QUOVADUS V. ILLINOIS

24-6809 MUHAMMAD, ALI R. V. LONE STAR FUNDS, ET AL.

24-6825 DOE, JANE V. DWOSH, JACK

24-6828 STRONG, ERIC W. V. BUESGEN, WARDEN

24-6829 DASLER, TIMOTHY V. KNAPP, JENNIFER

24-6832 BOYD, MICHAEL L. V. LAY, WARDEN, ET AL.

24-6834 CONLEY, KIMEO D. V. SCHULT, TAMI J.

24-6835 SHELTON, SEAN V. ILLINOIS

24-6843 TOWNSEND, ALBERT J. V. SPATNY, WARDEN

24-6846 GEORGE, GAYLE V. U.S. BANK NAT. ASSN.

24-6851 HARNED, IRVING A. V. FULTON CTY., GA CLERK'S, ET AL.

24-6852 DIAZ, ERIC W. V. PENNSYLVANIA

24-6853 SINKEVITCH, BRETT A. V. MILLER, SUPT., SNAKE RIVER

24-6854 CARTER, AUSTIN R. V. GENESIS ALKALI LLC, ET AL.

24-6857 HERTA, MARIA V. SUPERIOR COURT OF CA, ET AL.

24-6858 COLVIN, DEON D. V. SUPERIOR COURT OF DC

24-6859 RAY, CECIL V. PHAMS, WARDEN, ET AL.

24-6860 SANDERSON, MITCHELL S. V. AGOTNESS, JUDGE

24-6864 HOUSTON, DARREN L. V. TEXAS

24-6866 GUZMAN, ADRIAN L. V. COLORADO

24-6889 LaCOUNT, BENJAMIN V. UNITED STATES

24-6906 MACK, REGINALD V. UNITED STATES

24-6919 ROSADO SANCHEZ, PABLO E. V. KALANICK, TRAVIS, ET AL.

24-6940 LE, TAM Q. V. HOOPER, WARDEN

24-6944 ISAACS, ANDREW V. INTERPLEX SUNBELT, INC., ET AL.

24-7004 NELSON, GERALD V. NY CITY TRANSIT AUTH., ET AL.

24-7005 LASTER, ALSHAM M. V. INDIANA

24-7037 SIGUENZA, MARLON E. V. GUZMAN, WARDEN

24-7049 FIMBRES, MICHAEL V. BAILEY, ACTING WARDEN

24-7061 JONES, DAVID M. V. INDIANA

24-7066 GARADA, HAZEM V. D.C. BOARD OF MEDICINE

24-7107 DUNKLEBERGER, BRANDON A. V. ILLINOIS

24-7116 THAYER, KEZIAH V. VT DEPT. FOR CHILDREN, ET AL.

The petitions for writs of certiorari are denied.

24-6820 LETTIERI, DAVID C. V. BROOME CTY. SHERIFFS, ET AL.

24-6975 WHATLEY, SAMUEL T. V. T-MOBILE USA, INC.

The motions of petitioners for leave to proceed *in forma pauperis* are denied, and the petitions for writs of certiorari are dismissed. See Rule 39.8.

HABEAS CORPUS DENIED

24-7110 IN RE PHILLIP J. COLWELL

24-7134 IN RE KESEAN WILSON

The petitions for writs of habeas corpus are denied.

MANDAMUS DENIED

24-6840 IN RE LOLONYON Y. AKOUETE

24-6844 IN RE GAYLE GEORGE

The petitions for writs of mandamus are denied.

REHEARINGS DENIED

24-205 WEISS, MICHAEL A. V. LIN, PEGGY P., ET AL.

24-717 IN RE JONA B

24-763 IN RE BO ZOU

24-6248 BROWN, KENNETH V. ADAMS, WARDEN

24-6397 AHMAD, MAHFOOZ V. DAY, COLIN, ET AL.

24-6449 JONES, BELINDA V. HOWARD, WARDEN

24-6726 KRUMBACK, JASON V. PIRRAGLIA, ACTING WARDEN, ET AL.

The petitions for rehearing are denied.

SUPREME COURT OF THE UNITED STATES

APACHE STRONGHOLD *v.* UNITED STATES, ET AL.

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

No. 24–291. Decided May 27, 2025

The petition for a writ of certiorari is denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

JUSTICE GORSUCH, with whom JUSTICE THOMAS joins, dissenting from the denial of certiorari.

For centuries, Western Apaches have worshipped at Chí'chil Biłdagoteel, or Oak Flat. They consider the site a sacred and "direct corridor to the Creator." Pet. for Cert. 8. It is a place where tribal members conduct "religious ceremonies that cannot take place elsewhere." *Ibid.* Recognizing Oak Flat's significance, the government has long protected both the land and the Apaches' access to it.

No more. Now, the government and a mining conglomerate want to turn Oak Flat into a massive hole in the ground. To extract copper lying beneath the land, they plan to blast tunnels that will result in a crater perhaps 1,000 feet deep and nearly two miles wide. 101 F. 4th 1036, 1131 (CA9 2024) (en banc) (Murguia, C. J., dissenting). "It is undisputed" that the government's plan will permanently "destroy the Apaches' historical place of worship, preventing them from ever again engaging in religious exercise" at Oak Flat. *Id.*, at 1129.

Seeking to halt the destruction of the Apaches' sacred site, Apache Stronghold, a nonprofit organization, sued under the Religious Freedom Restoration Act of 1993 (RFRA). That law prevents the federal government from "substantially burden[ing] a person's exercise of religion," unless

that burden represents "the least restrictive means of furthering [a] compelling governmental interest." 107 Stat. 1488, 42 U. S. C. §2000bb–1(b)(2). In a sharply divided en banc decision, the Ninth Circuit rejected Apache Stronghold's challenge. Though the government's plan will result in the destruction of an ancient sacred site, the Ninth Circuit reasoned, that plan does "not impose a substantial burden on religious exercise." 101 F. 4th, at 1044 (*per curiam*).

Apache Stronghold asks us to review the Ninth Circuit's extraordinary conclusion. But the Court today turns aside the group's request. Respectfully, that is a grave mistake. This case meets every one of the standards we usually apply when assessing petitions for certiorari: The decision below is highly doubtful as a matter of law, it takes a view of the law at odds with those expressed by other federal courts of appeals, and it is vitally important. Before allowing the government to destroy the Apaches' sacred site, this Court should at least have troubled itself to hear their case.

I

A

Oak Flat is home to "old-growth oak groves, sacred springs, burial locations, and a singular concentration of archaeological sites testifying to its persistent use for the past 1,500 years." Pet. for Cert. 6. Western Apaches believe that the site is the dwelling place of the Ga'an—"saints" or "holy spirits" that lie at "the very foundation of [their] religion." App. to Pet. for Cert. 871a. The Ga'an "live and breathe" in Oak Flat. *Ibid.* "They come from the ground," and they serve as "messengers between Usen, the Creator, and [Apaches] in the physical world." *Id.*, at 983a.

Faithful to these beliefs, tribal members have worshipped at Oak Flat for centuries, conducting there a number of religious ceremonies that cannot take place anywhere else. Pet. for Cert. 8. One example, the "Sunrise Ceremony," is a multiday coming-of-age ceremony for young women. *Ibid.*

In the ceremony, a young woman's "godmother dresses her in the essential tools of becoming a woman, and tribal members surround her with singing, dancing, and prayer." *Ibid.* (internal quotation marks and alteration omitted).

The ceremony depends on Oak Flat in many ways. It requires the Apache girl coming of age to gather certain plants from Oak Flat—plants Apaches believe to have the "spirit of Chí'chil Biłdagoteel." App. to Pet. for Cert. 975a. The Ga'an later "come from the mountains," *id.*, at 982a–983a, "enter Apache men called crown dancers," and "bless the girl," Pet. for Cert. 10. On the third day of the ceremony, the girl is painted with white clay from the ground at Oak Flat. The clay represents the Apache creation story, in which a "white-painted woman came out of the earth, covered with white ash from the earth's surface." App. to Pet. for Cert. 883a. When an Apache girl is painted with the white clay, "[i]t molds her into the woman she is going to be," and she is "'imprint[ed]' with the spirit of Oak Flat." *Id.*, at 981a–982a; Pet. for Cert. 11. Her godmother wipes the clay from her eyes, and the girl is "reborn," "transform[ed] into womanhood." App. to Pet. for Cert. 977a.

Pet. for Cert. 11.

Tribal members believe the destruction of Oak Flat "will close off a portal to the Creator forever and will completely devastate the Western Apaches' spiritual lifeblood." 519 F. Supp. 3d 591, 604 (Ariz. 2021). For the women who came of age at Oak Flat in particular, that means their ties to Chí'chil Biłdagoteel, and "to all of the [girls] past, present, who have had their Sunrise Ceremony there," will be severed. App. to Pet. for Cert. 977a. Absent that connection, Apache women say, they "can't call [them]selves Apache." *Ibid.* Without "the spirit of Chi'chil Bildagoteel . . . there's nothing. There's nothing at all." *Id.*, at 984a.

B

Though Oak Flat sits on federal land today, it was not always so. Once, Western Apaches enjoyed a vast territory that embraced Oak Flat. See C. Royce, Indian Land Cessions in the United States, H. R. Doc. No. 736, 56th Cong., 1st Sess., 922 (1899) (Royce). With time, of course, others laid claim to the land. Among those was the nation of Mexico. For a period, it asserted rights to large swaths of what is now the American Southwest. That changed after the Mexican-American War, when Mexico ceded its claims by treaty to the United States in 1848. See Pet. for Cert. 12; Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico, Feb. 2, 1848, 9 Stat. 922 (Treaty of Guadalupe Hidalgo).

A few years later, the United States and the Apaches signed a treaty of their own. In it, the United States promised that it would "at its earliest convenience designate, settle, and adjust . . . territorial boundaries" with the Apaches. Treaty with the Apaches, Art. 9, July 1, 1852, 10 Stat. 980 (Treaty of Santa Fe). But the "U. S. never formally complied with" that promise. Royce 789. Instead, many years of conflict, known as the Apache Wars, followed. See R. Ogle, Federal Control of the Western Apaches, 1848–1886, p. 242 (1970); App. to Pet. for Cert. 963a. Eventually, the government forced the Apaches onto reservations, and they "lost large portions of their homelands, including Oak Flat." App. to Pet. for Cert. 858a–859a.

Beginning in the 20th century, however, the government took some steps to protect the site. First, in 1905, the government created the Tonto National Forest, of which Oak Flat forms a part. *Id.*, at 827a; 101 F. 4th, at 1129. Then, in 1955, President Eisenhower reserved a portion of Oak Flat to protect it from mining. See 20 Fed. Reg. 7336–7337. Later, President Nixon renewed that protection. 36 Fed. Reg. 19029 (1971). And as recently as 2016, the National Park Service added Oak Flat to the National Register of

Historic Places, in part because of the site's significance to tribal members. See Pet. for Cert. 13.

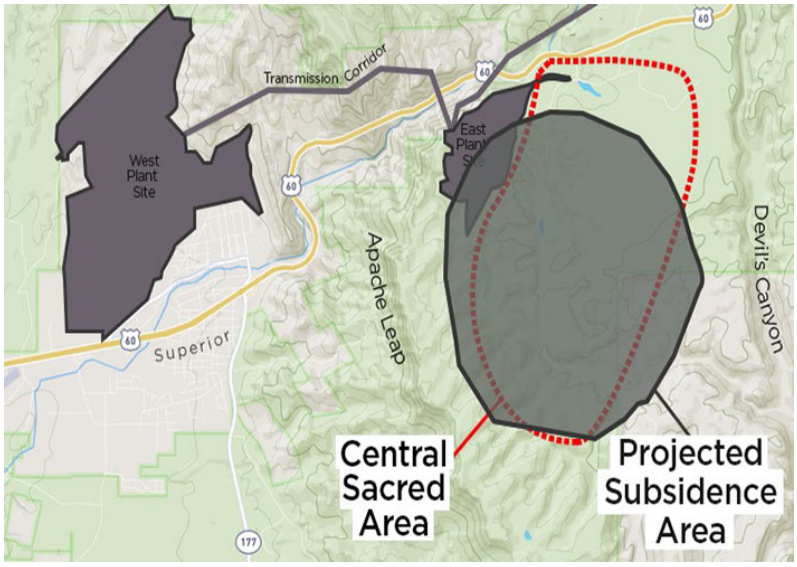
Those protections started coming under pressure in 1995 with the discovery of a copper deposit thousands of feet beneath Oak Flat. App. to Pet. for Cert. 687a. Seeking to exploit that resource, two multinational mining companies, Rio Tinto and BHP, joined forces to form Resolution Copper, and together they began lobbying Congress for permission to mine the site. Pet. for Cert. 13. Over the ensuing two decades, various Members of Congress proposed at least 12 separate standalone bills aimed at requiring the government to transfer Oak Flat to Resolution Copper. 101 F. 4th, at 1045, n. 1. Following hearings and testimony from tribal members, however, each of those pieces of legislation failed. *Ibid.*, n. 2.

That experience eventually led Resolution Copper and its congressional allies to try a different tack. Every year, Congress passes a bill called the National Defense Authorization Act (NDAA). Some call it "must-pass" legislation. 101 F. 4th, at 1128 (Murguia, C. J., dissenting). In 2014, the NDAA was 698 pages long and authorized hundreds of billions of dollars in defense spending. See Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, 128 Stat. 3292; see also H. R. Rep. No. 113–446, pt. 2, p. 2 (2014). To that bill, legislators attached "a last-minute rider" regarding the exploitation of Oak Flat. See §3003, 128 Stat. 3732; Reply to Brief in Opposition 10–11.

That provision, called the Land Exchange Act, sought to accomplish several things. It authorized the government to transfer Oak Flat to Resolution Copper in exchange for other scattered parcels of land. See §§3003(b)(2), (b)(4), (c)(1), (d)(1), 128 Stat. 3732–3737. It revoked the orders by Presidents Eisenhower and Nixon protecting the area from mining. §3003(i)(1)(A), *id.*, at 3740. And it directed the Secretary of Agriculture to prepare an environmental impact

statement (EIS). §3003(c)(9)(B), *id.*, at 3735–3736. After completing the EIS, the government must "convey all right, title, and interest" in Oak Flat to Resolution Copper within "60 days." §3003(c)(10), *id.*, at 3736–3737.

In January 2021, the Department of Agriculture published an EIS. See App. to Pet. for Cert. 685a. In it, the Department explained that Resolution Copper's mining activities, using a technique called panel caving, would result in a crater "between 800 and 1,115 feet deep and roughly 1.8 miles across." *Id.*, at 690a. The Department admitted that Oak Flat would "be directly and permanently damaged by the subsidence area." *Id.*, at 698a–699a. Indeed, the Apaches tell us, the planned crater overlaps almost entirely with the area sacred to them.



Pet. for Cert. 15.

Acknowledging that the planned destruction of Oak Flat would cause "indescribable hardship" to tribal members, App. to Pet. for Cert. 701a, the Department considered alternative mining techniques. But it rejected those alterna-

tives, concluding that, while other "underground techniques" could "technically be applied," they would "substantially reduce the amount of ore that could be profitably mined." *Id.*, at 931a, 934a.

Now, the planned destruction of Oak Flat appears imminent. Though the Department withdrew its initial EIS shortly after issuing it in 2021, the government represents that it intends to publish a final EIS on June 16, 2025, and transfer the land to Resolution Copper on or shortly after that date. See Letter from D. Sauer, Solicitor General, to S. Harris, Clerk of Court (Apr. 21, 2025).

C

Seeking to halt the transfer and destruction of Oak Flat, Apache Stronghold filed suit under RFRA in 2021 when the Department was preparing to publish its initial EIS. Pet. for Cert. 16. After the district court denied its motion for a preliminary injunction, Apache Stronghold took its case to the Ninth Circuit, where years of litigation followed.

The first round of that litigation culminated in a split panel decision rejecting Apache Stronghold's RFRA claim. The panel began by observing that RFRA prevents the federal government from "'substantially burden[ing]' a person's sincere exercise of religion," unless that burden is "'the least restrictive means of furthering'" a "'compelling governmental interest.'" 38 F. 4th 742, 752 (2022) (quoting 42 U. S. C. §§2000bb–1(a), (b)). And because the government did not dispute that "Apache Stronghold's members seek to exercise sincere religious beliefs by holding ceremonies on Oak Flat," the panel recognized, the first critical question it faced concerned whether the government's proposed land transfer and mining plans would "substantially burden" the Apaches' religious exercises. 38 F. 4th, at 752.

To answer that question, a majority of the panel turned for guidance to an earlier Ninth Circuit case, *Navajo Nation* v. *United States Forest Serv.*, 535 F. 3d 1058 (2008) (en

banc). There, the Ninth Circuit had held that burdens on religious exercise qualify as "substantial" in two—and only two—circumstances: (1) "when individuals are forced to choose between following the tenets of their religion and receiving a governmental benefit," and (2) when individuals are "coerced to act contrary to their religious beliefs by the threat of civil or criminal sanctions." *Id.*, at 1070. Applying that test to Apache Stronghold's claim, the majority concluded that the government's plans would not substantially burden tribal members' religious exercises. Those plans may "mak[e] worship on Oak Flat 'impossible.'" 38 F. 4th, at 757. But, the majority reasoned, the government's plans did not force tribal members to reject their faith and thus did not offend RFRA. Disagreeing with the majority's understanding of *Navajo Nation* and its application to Apache Stronghold's claim, Judge Berzon dissented. *Id.,* at 773.

That, however, did not prove the Ninth Circuit's last word on the matter. After the panel ruled, the court agreed to rehear Apache Stronghold's case en banc. And, at the culmination of those proceedings, a majority of the en banc court announced its decision to overrule *Navajo Nation*. For purposes of RFRA, the majority held, a "substantial burden" on religious exercise isn't limited to the two categories discussed in that case. "[P]reventing access to religious exercise" also qualifies. 101 F. 4th, at 1043 (*per curiam*).

You might think that decision would have marked a significant victory for the Apaches. After all, the destruction of Oak Flat would "prevent" them from conducting religious exercises, including ones they believe can occur nowhere else. But rather than end its analysis there, a different and closely divided 6-to-5 majority of the en banc court proceeded to articulate a special exception to the rule the court had just recognized. While the phrase "substantial burden" generally reaches actions that "preven[t] access to religious exercise," *ibid.*, the majority said, that rule does not apply

to actions involving "a disposition of government real property," *id.*, at 1055. And for that reason, the Ninth Circuit once again denied Apache Stronghold's request for relief.

How the en banc court arrived at its conclusion is a story of its own. The court began by reciting some legal history involving the Free Exercise Clause of the First Amendment. *Id.*, at 1056–1058. In cases like *Sherbert* v. *Verner*, 374 U. S. 398 (1963), and *Wisconsin* v. *Yoder*, 406 U. S. 205 (1972), the Ninth Circuit observed, this Court asked whether the government's challenged action imposed a substantial burden on religion, whether that burden served a compelling interest, and whether the government's chosen means were narrowly tailored. Later, the Ninth Circuit continued, this Court upended that approach in *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872 (1990), by holding that *Sherbert* and *Yoder*'s test for Free Exercise claims does not apply to challenged governmental actions that are "'neutral'" toward and among religions and "generally applicable" to all persons. 494 U. S., at 878–879. Later still, the Ninth Circuit noted, Congress expressed displeasure with *Smith*, adopted RFRA, and in doing so effectively guaranteed the *Sherbert* and *Yoder* test would be applied "in all cases where free exercise of religion is substantially burdened." 42 U. S. C. §2000bb(b)(1).

After laying out this history, the Ninth Circuit introduced a wrinkle that, in its estimation, bore dramatically on RFRA's meaning. The court pointed to another pre-*Smith* case, *Lyng* v. *Northwest Indian Cemetery Protective Assn.*, 485 U. S. 439 (1988). That case involved a First Amendment challenge to a plan to construct a road on federal land near sacred tribal sites. *Id.*, at 443. On the Ninth Circuit's telling, *Lyng* set forth a special test for analyzing whether the government's "disposition" of its real property runs afoul of the Free Exercise Clause. 101 F. 4th, at 1055. That test, the Ninth Circuit said, permits the government to do

as it pleases with its property as long as it has no "tendency to coerce individuals into acting contrary to their religious beliefs" and does not "discriminat[e]" against or among religious adherents. *Id.*, at 1051 (internal quotation marks omitted). In the Ninth Circuit's view, what counts as a "substantial burden" under RFRA "must be construed in light of" this Court's pre-*Smith* First Amendment jurisprudence and thus must be understood to "subsum[e], rather than abrogat[e], the holding of *Lyng*." 101 F. 4th, at 1063.

The upshot? Through this long series of moves, the Ninth Circuit concluded that the government *usually* imposes a substantial burden on religious exercise when it prevents that exercise. But, thanks to *Lyng*, a *different* rule applies when it comes to the "disposition" of the government's real property. 101 F. 4th, at 1055. In that setting, the Ninth Circuit held, a substantial burden arises only when the government coerces people into defying their religious beliefs or discriminates between religions. *Id.*, at 1055, 1063. And, the Ninth Circuit reasoned, Apache Stronghold could not satisfy that standard because the government's plan does not force anyone to reject their religious beliefs and does not discriminate among religions. To be sure, the government's plan may promise the destruction of a sacred site and thus prevent religious exercises from occurring. But, the court reasoned, none of that is enough to amount to a substantial burden under RFRA when the "disposition" of federal land is involved. *Id.*, at 1053, 1063.

II

The Ninth Circuit's extraordinary holding easily merits this Court's attention. It is far from obviously correct. It poses a question of exceptional importance. And it implicates a circuit split. Simply put, this case meets every one of the standards we generally apply when assessing petitions seeking our review. See this Court's Rule 10.

A

Start with the question whether the Ninth Circuit erred. There are many reasons to think it did. Consider just a few of them.

First, the Ninth Circuit's interpretation of the phrase "substantial burden" is difficult to reconcile with the statutory text. As a matter of ordinary meaning, after all, an action that prevents a religious exercise does not just burden that exercise substantially, it burdens it completely. Even the Ninth Circuit seemed to recognize as much, acknowledging that, as a rule, the government imposes a substantial burden on religious exercises when it "prevent[s]" them entirely. 101 F. 4th, at 1043 (*per curiam*); *id.*, at 1052; see also *id.*, at 1091, 1104 (R. Nelson, J., concurring).

Exactly nothing in the phrase "substantial burden"—or anything else in RFRA's text—hints that a different and more demanding standard applies when (and only when) the "disposition" of the government's property is at issue. *Id.*, at 1055, 1063. To the contrary, RFRA proceeds to define the "exercise of religion" to include "[t]he use . . . of real property for the purpose of religious exercise." 42 U. S. C. §§2000bb–2, 2000cc–5(7)(B). The statute adds that its demands apply to "all" of "Federal law," without regard to subject matter. §2000bb–3(a). And the statute provides that "nothing" in its provisions "shall be construed to authorize any government to burden any religious belief." §2000bb–3(c). In each of these ways, RFRA's terms suggest that a law disposing of federal real property is to be treated like any other.

Second, while RFRA may have sought to restore some of this Court's pre-*Smith* First Amendment jurisprudence, we have never held that the statute should be construed to "subsum[e]" that jurisprudence wholesale. 101 F. 4th, at 1061. Far from it. In *Burwell* v. *Hobby Lobby Stores*, for example, the government argued that RFRA's use of the phrase "exercise of religion" should be understood to reach

only those religious practices this Court had recognized to be protected by the First Amendment before *Smith*. See 573 U. S. 682, 713 (2014). But this Court emphatically rejected that notion, describing its implications as "absurd" and explaining that, "by enacting RFRA, Congress went far beyond what this Court ha[d] held [to be] constitutionally required" before *Smith*. 573 U. S., at 706, 714–716. Similarly, in *Holt* v. *Hobbs*, a lower court invoked this Court's pre-*Smith* First Amendment decisions to hold that a prison regulation prohibiting inmates from growing beards did not "substantially burden" religious exercise under the Religious Land Use and Institutionalized Persons Act (RLUIPA), RFRA's "sister statute." 574 U. S. 352, 356, 361 (2015). But, again, this Court firmly rejected that course, holding that the lower court had "improperly imported a strand of reasoning" from First Amendment decisions into a distinct statutory setting that guarantees "greater protection." *Id.*, at 361.

Third, even taken on its own terms, it is hard to see how *Lyng* can be read as setting forth a special test for determining when a government's "disposition" of land represents a "substantial burden" on religion. Just search *Lyng* for the phrase "substantial burden." You will not find it. Nor did *Lyng* involve a challenge to a governmental plan that seeks to destroy a religious site, as the government's plan for Oak Flat would. Instead, that case concerned a plan to build a road near religious sites that promised to generate noise and considerable disruption, but that also promised to leave those sites standing. 485 U. S., at 442, 444, 454. In rejecting a First Amendment challenge to the government's plan in *Lyng*, the Court took pains to stress that point, and the fact that the government's actions would not "*prohibit*" religious exercises. *Id.*, at 452 (emphasis added).

To be sure, *Lyng* also stressed that the government's plan

at issue there did not "discriminate" against or among religions. *Id.*, at 453. And later, in *Smith*, this Court read *Lyng* to support its view that the government does not violate the Free Exercise Clause when its actions are "neutral" toward and among religions and "generally applicable." 494 U. S., at 881, 883. But none of that has any bearing here. As we have seen, the fact that the government acts pursuant to a neutral and generally applicable law is not enough to satisfy RFRA. Even in those circumstances, the government may not impose a "substantial burden" on religious exercise unless it has a compelling reason to do so and employs the least restrictive means to further that interest.

Fourth, at bottom, it seems the Ninth Circuit was concerned that a ruling for Apache Stronghold would effectively afford tribal members a "'religious servitude'" on federal land at Oak Flat. 101 F. 4th, at 1052. And, the argument goes, those who adopted RFRA could not have intended to afford Tribes or others that kind of power over the disposition of federal property. Brief for Federal Respondents in Opposition 16. But unexpressed legislative intentions are not the law. And even if we were to abandon the statutory text in favor of guesswork about unenacted congressional purposes, it is far from clear why we should make the guess the Ninth Circuit did.

The truth is, Congress has adopted all sorts of laws restricting the government's power to dispose of its real property. Take just one example, the Endangered Species Act. That law, this Court once held, required the government to halt "operation of a virtually completed federal dam" to protect the endangered "snail darter," a "previously unknown species of perch." *TVA* v. *Hill*, 437 U. S. 153, 156, 158 (1978). The Court read the Act to require that result even though Congress had spent more than $100 million on the dam—nearly half a billion in today's dollars—and our holding effectively "'divest[ed] the Government of its right to use what is, after all, *its* land.'" 101 F. 4th, at 1051 (quoting

Lyng, 485 U. S., at 453). If Congress went to such lengths to accommodate the snail darter, why should we suppose it offered less protection to people practicing an ancient faith?

B

Not only does the Ninth Circuit's decision merit our review because it rests on questionable legal footing. Review is all the more warranted because that decision implicates both a vital question and a circuit split.

No one before us disputes the significance of this case. Nor could anyone sensibly do so. As the government has made plain, it intends to clear the way for Resolution Copper to begin the destruction of Oak Flat imminently. Letter from D. Sauer, Solicitor General, to S. Harris, Clerk of Court (Apr. 21, 2025). The effects of the government's plan promise to be "immediate, permanent, and large in scale." App. to Pet. for Cert. 912a. An ancient sacred site will be destroyed, replaced by a 2-mile-wide crater. The Apaches tell us, without contradiction, that the destruction of Oak Flat will prevent them from conducting religious exercises that cannot take place anywhere else. Pet. for Cert. 8. Indeed, they say, the government's plan will effectively "end Apache religious existence as we know it." *Id.*, at 40. Even the government has acknowledged that the destruction of Oak Flat will inflict "indescribable hardship" on the Apaches. App. to Pet. for Cert. 869a.

But if tribal members will suffer the most, they will hardly be alone. The Ninth Circuit's decision promises to affect many others too. Take the Knights of Columbus. For 60 years, they held Mass on Memorial Day in Virginia's Poplar Grove National Cemetery. Pet. for Cert. 36. But after the Ninth Circuit's decision in this case, the National Park Service invoked that court's reasoning, denied permission for the Mass in 2023, and argued that the Knights suffered "'no burden'" under RFRA from the discontinuation

of their longstanding worship. *Ibid.* (quoting Brief for Defendants in *Knights of Columbus* v. *National Park Service*, No. 3:24–cv–363 (ED Va., May 22, 2024), ECF Doc. 21, pp. 20–21). Though the Park Service eventually relented after litigation ensued, seemingly nothing would prevent it from trying its hand again so long as the Ninth Circuit's decision stands. Nor would anything appear to prevent the government from prohibiting worship at Ebenezer Baptist Church where Martin Luther King, Jr., preached, or at the many other historic churches situated on federal land. See Pet. for Cert. 37.

Perhaps unsurprisingly, the Ninth Circuit's decision in this case stands as an outlier. Not a single other Court of Appeals has suggested that the "substantial burden" test in RFRA or its sister statute RLUIPA contains anything like the Ninth Circuit's special rule for the "disposition" of government property. To the contrary, one court after another has held that preventing a religious exercise is, necessarily, a "substantial burden" on that religious exercise. As Chief Judge Sutton has succinctly put it, "[t]he greater restriction (barring access to the practice) includes the lesser one (substantially burdening the practice)." *Haight* v. *Thompson*, 763 F. 3d 554, 565 (CA6 2014); see also *Yellowbear* v. *Lampert*, 741 F. 3d 48, 56 (CA10 2014); *Bethel World Outreach Ministries* v. *Montgomery Cty. Council*, 706 F. 3d 548, 555–556 (CA4 2013); *West* v. *Radtke*, 48 F. 4th 836, 845, n. 3 (CA7 2022); *In re Young*, 82 F. 3d 1407, 1418 (CA8 1996); *Thai Meditation Assn. of Ala., Inc.* v. *Mobile*, 980 F. 3d 821, 830–831 (CA11 2020).

Yet, even if no other circuit ever follows the Ninth Circuit's lead, its outlying rule will have outsized effects. That circuit encompasses approximately 74% of all federal land and almost a third of the nation's Native American population. Pet. for Cert. 36. Thanks in large measure to these facts, every circuit decision over the last three decades addressing RFRA sacred-site claims has come "from the Ninth

Circuit." Reply to Brief in Opposition 5–6. As a practical matter, then, if allowed to stand, the Ninth Circuit's holding below will govern most (if not all) RFRA sacred-site disputes in this country.

*

While this Court enjoys the power to choose which cases it will hear, its decision to shuffle this case off our docket without a full airing is a grievous mistake—one with consequences that threaten to reverberate for generations. Just imagine if the government sought to demolish a historic cathedral on so questionable a chain of legal reasoning. I have no doubt that we would find that case worth our time. Faced with the government's plan to destroy an ancient site of tribal worship, we owe the Apaches no less. They may live far from Washington, D. C., and their history and religious practices may be unfamiliar to many. But that should make no difference. "Popular religious views are easy enough to defend. It is in protecting unpopular religious beliefs that we prove this country's commitment to . . . religious freedom." *Masterpiece Cakeshop, Ltd.* v. *Colorado Civil Rights Comm'n*, 584 U. S. 617, 649 (2018) (GORSUCH, J., concurring).

SUPREME COURT OF THE UNITED STATES

L. M., A MINOR, BY AND THROUGH HIS FATHER AND STEPMOTHER AND NATURAL GUARDIANS, CHRISTOPHER AND SUSAN MORRISON *v.* TOWN OF MIDDLEBOROUGH, MASSACHUSETTS, ET AL.

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

No. 24–410. Decided May 27, 2025

The petition for a writ of certiorari is denied.

JUSTICE THOMAS, dissenting from the denial of certiorari.

In *Tinker* v. *Des Moines Independent Community School Dist.*, 393 U. S. 503 (1969), this Court held that public-school officials may not restrict a student's freedom of speech unless his behavior "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." *Id.*, at 513. I have previously explained why *Tinker*'s holding is "without basis in the Constitution" and should be "dispense[d] with . . . altogether." *Morse* v. *Frederick*, 551 U. S. 393, 410, 422 (2007) (concurring opinion); see *id.*, at 410–422; *Mahanoy Area School Dist.* v. *B. L.*, 594 U. S. 180, 216–217 (2021) (dissenting opinion). But, unless and until this Court revisits it, *Tinker* is binding precedent that lower courts must faithfully apply.

For the reasons explained by JUSTICE ALITO, the First Circuit decision below flouts *Tinker* and its progeny. *Post*, at 6–13 (opinion dissenting from denial of certiorari). Petitioner L. M. plainly did not create a "materia[l] disrupt[ion]," *Tinker*, 393 U. S., at 513, by wearing t-shirts reading "There Are Only Two Genders"—and, later, after his school barred that shirt—"There Are CENSORED Genders," 103 F. 4th 854, 860 (2024). In holding otherwise, the First Circuit distorted this Court's First Amendment case law in significant ways that warrant this Court's review. I therefore join JUSTICE ALITO's opinion and respectfully dissent from the denial of certiorari.

SUPREME COURT OF THE UNITED STATES

L. M., A MINOR, BY AND THROUGH HIS FATHER AND STEPMOTHER AND NATURAL GUARDIANS, CHRISTOPHER AND SUSAN MORRISON *v.* TOWN OF MIDDLEBOROUGH, MASSACHUSETTS, ET AL.

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No. 24–410. Decided May 27, 2025

JUSTICE ALITO, with whom JUSTICE THOMAS joins, dissenting from the denial of certiorari.

This case presents an issue of great importance for our Nation's youth: whether public schools may suppress student speech either because it expresses a viewpoint that the school disfavors or because of vague concerns about the likely effect of the speech on the school atmosphere or on students who find the speech offensive. In this case, a middle school permitted and indeed encouraged student expression endorsing the view that there are many genders. But when L. M., a seventh grader, wore a t-shirt that said "There Are Only Two Genders," he was barred from attending class. And when he protested this censorship by blocking out the words "Only Two" and substituting "CENSORED," the school prohibited that shirt as well.

The First Circuit held that the school did not violate L. M.'s free-speech rights. It held that the general prohibition against viewpoint-based censorship does not apply to public schools. And it employed a vague, permissive, and jargon-laden rule that departed from the standard this Court adopted in *Tinker* v. *Des Moines Independent Community School Dist.*, 393 U. S. 503 (1969).

The First Circuit's decision calls out for our review.

I

A

In March of 2023, L. M. was a seventh grader at Nichols Middle School (NMS or the School) in Middleborough, Massachusetts. Inside and outside the classroom, NMS promotes the view that gender is a fluid construct and that a person's self-defined identity—not biological sex—determines whether that person is male, female, or something else. See App. to Pet. for Cert. 98a–99a, 125a–126a. NMS also encourages students to embrace and express this viewpoint, including during the school's "PRIDE Spirit Week." *Id.*, at 119a; see also *id.*, at 101a–102a.

L. M., however, sees things differently. His "understanding of basic biology" has led him to believe that "there are only two sexes, male and female, and that a person's gender . . . is inextricably tied to sex." *Id.*, at 90a. Nor is L. M. alone in this regard. Several of his peers take issue with NMS's position on questions of human identity, sex, and gender, but they remain silent due to the social consequences of disagreeing with the School's authority figures. *Id.*, at 99a–100a, 126a.

To register his dissent and start a dialogue on the topic, L. M. wore a shirt to school that read, "There Are Only Two Genders." 103 F. 4th 854, 860 (CA1 2024). But NMS censored L. M.'s speech no sooner than it started.

The school principal removed L. M. from his first-period gym class after a teacher called to report the shirt. The teacher expressed concern for the "physical safety" of the student body and claimed that "multiple members of the LGBTQ+ population at NMS . . . would be impacted by the t-shirt message" and could "potentially disrupt classes." Joint App. in No. 23–1535 etc. (CA1), p. 86. After haling L. M. into her office, the principal explained that other students had "complained" that the shirt "made them upset." App. to Pet. for Cert. 103a, 127a. She then told L. M. that he could not return to class unless he changed clothes.

L. M. declined, so he was sent home.

A week and a half later, L. M.'s father emailed the superintendent of the Middleborough Public School System and inquired why his son could not wear the "Two Genders" shirt. L. M.'s father noted that the shirt was not "directed to any particular person" and "simply stated [L. M.'s] view on a . . . topic that is being discussed in social media, schools, and churches all across our country." *Id.*, at 121a. He also pointed out that many NMS students make political statements "every day" through "their choice of clothes, pins, posters, and speech." *Ibid.*; see, *e.g.*, Reply Brief 12 (NMS social-media post featuring a student wearing a shirt that reads, "HE SHE THEY IT'S ALL OKAY"). L. M.'s father explained that L. M. just wanted to do the same. In response, the superintendent explained that the shirt violated the school dress code by "target[ing] students of a protected class; namely in the area of gender identity." App. to Pet. for Cert. 122a.

Frustrated that he was not allowed to express his views on an issue of personal and national concern—especially when other students and NMS officials routinely espouse the opposite position during school hours—L. M. wore a redacted version of the shirt in protest. It read: "There Are CENSORED Genders." 103 F. 4th, at 860. But this shirt fared no better. Moments after L. M. arrived to his first class, he was summoned to the principal's office and told that the "CENSORED" shirt was also banned. Rather than miss another day of school, L. M. acquiesced and changed clothes.

B

L. M., by and through his parents and natural guardians, filed suit under Rev. Stat. §1979, 42 U. S. C. §1983, in the District of Massachusetts against the town, school committee, superintendent, and principal. He alleged violations of

his First and Fourteenth Amendment rights and, as relevant here, claimed that NMS engaged in viewpoint discrimination and breached his free-speech rights under this Court's decision in *Tinker*. Soon after filing the complaint, L. M. moved for a preliminary injunction.

The District Court denied relief. See 677 F. Supp. 3d 29, 41 (2023). It acknowledged that students retain their First Amendment rights while at public school. But under *Tinker*, the District Court explained, the Constitution allows schools to restrict student expression that (1) "'materially disrupts classwork or involves substantial disorder'" or (2) "'inva[des] . . . the rights of others.'" 677 F. Supp. 3d, at 37 (quoting *Tinker*, 393 U. S., at 513). The District Court then concluded that L. M.'s shirts ran afoul of *Tinker*'s "rights of others" limitation. With respect to the first shirt, the court reasoned that the "[s]chool administrators were well within their discretion to conclude that" gender-nonconforming students "have a right to attend school without being confronted by messages attacking their identities," and L. M.'s "Two Genders" shirt "may communicate that only two gender identities—male and female—are valid, and any others are invalid or nonexistent." 677 F. Supp. 3d, at 38. With respect to the second shirt, the court found that the NMS administrators "could reasonably conclude" that the "CENSORED" shirt "did not merely protest censorship but conveyed the 'censored' message and thus invaded the rights of the other students" too. *Id.*, at 39.

At the parties' request, the District Court converted its preliminary-injunction decision into a final judgment, and L. M. appealed. L. M. argued that his expression did not target or harass any particular student, that NMS administrators lacked sufficient evidence to reasonably predict that the shirts would cause a material disruption, and that NMS could neither suppress his speech for viewpoint-based reasons nor condone a heckler's veto of his speech.

On appeal, the First Circuit affirmed on an alternative ground. See 103 F. 4th 854. Instead of holding that the shirts infringed the "rights of others," as had the District Court, the First Circuit relied on the other justification mentioned in *Tinker*: speech that "materially disrupts classwork or involves substantial disorder." 393 U. S., at 513. The court acknowledged that L. M.'s shirts—like the black armbands in *Tinker*—expressed his views "passively, silently, and without mentioning any specific students." 103 F. 4th, at 860. But the court saw a material difference between L. M.'s speech and that of the students in *Tinker*. According to the First Circuit, L. M.'s expression—unlike the speech in *Tinker*—"demean[ed] characteristics of personal identity, such as race, sex, religion, or sexual orientation" that "other students at the school share." 103 F. 4th, at 860, 867. After surveying decisions from other Circuits that have encountered similar situations, the First Circuit fashioned a bespoke two-pronged test to apply in this context:

> "[S]chool officials may bar passive and silently expressed messages by students at school that target no specific student if: (1) the expression is reasonably interpreted to demean one of those characteristics of personal identity, given the common understanding that such characteristics are unalterable or otherwise deeply rooted and that demeaning them strike[s] a person at the core of his being; and (2) the demeaning message is reasonably forecasted to poison the educational atmosphere due to its serious negative psychological impact on students with the demeaned characteristic and thereby lead to symptoms of a sick school—symptoms therefore of substantial disruption." *Id.*, at 873–874 (citations and internal quotation marks omitted).

When both prongs are satisfied, the First Circuit explained, a court can be confident "that speech is being barred only

for reasons *Tinker* permits and not merely because it is 'offensive' in the way that a controversial opinion always may be." *Id.*, at 874 (citing *Tinker*, 393 U. S., at 509).

Applying this standard to the facts at hand, the First Circuit resolved both prongs in favor of the School. Specifically, it determined (1) that NMS reasonably interpreted L. M.'s shirts as asserting that anyone who identifies as anything other than male or female is "'invalid or nonexistent,'" which would "demean the identity of transgender and gender-nonconforming NMS students"; and (2) such an affront on the very "existence" of these students would "'materially disrupt [their] ability to focus on learning.'" 103 F. 4th, at 879–883. In making the latter determination, the court deferred to the School's prior experiences with the "'LGBTQ+ population at NMS,'" particularly "the serious nature of the struggles, including suicidal ideation, that some of those students had experienced." *Id.*, at 882. Given the "'vulnerability'" of these students, the court saw no reason to second guess NMS's prediction that the shirts "would so negatively affect the[ir] psychology" that their academic performance and class attendance would decline. *Ibid.*

Finally, the First Circuit sidestepped L. M.'s viewpoint-discrimination arguments. Rather than fully engage with those arguments on the merits, the court, in a footnote, declined to import this Court's broader viewpoint-discrimination jurisprudence into the school context. See *id.*, at 883, and n. 9; see also *id.*, at 886, n. 11.

II

I would grant the petition for two reasons.

First, we should reaffirm the bedrock principle that a school may not engage in viewpoint discrimination when it regulates student speech. *Tinker* itself made that clear. See 393 U. S., at 511 ("Clearly, the prohibition of expression of one particular opinion . . . is not constitutionally permissible"). Curiously, however, the First Circuit declined to

follow *Tinker* in this regard, instead cherry-picking which First Amendment principles it thought worthy of allowing through the schoolhouse gates. By limiting the application of our viewpoint-discrimination cases, the decision below robs a great many students of that core First Amendment protection.

Second, we should also grant review to determine whether the First Circuit properly understood the rule adopted in *Tinker* regarding the suppression of student speech on the ground that it presents a risk of material disruption. We have described this standard as "demanding." *Mahanoy Area School Dist.* v. *B. L.*, 594 U. S. 180, 193 (2021). But the First Circuit fashioned a rule that is anything but. The lower courts are divided on how to apply *Tinker*'s "material disruption" standard in a context like this one,[1] and the decision below underscores the pressing need for clarification.

A

"[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police*

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[1] See, *e.g.*, *Zamecnik* v. *Indian Prairie School Dist. No. 204*, 636 F. 3d 874, 875 (CA7 2011) (upholding a student's right to wear a shirt that read, "Be Happy, Not Gay"); *Nuxoll* v. *Indian Prairie School Dist. No. 204*, 523 F. 3d 668, 670 (CA7 2008) (same); *Sypniewski* v. *Warren Hills Regional Bd. of Educ.*, 307 F. 3d 243, 246 (CA3 2002) (upholding a student's right to wear a shirt "inscribed with 'redneck' jokes"); see also *Harper ex rel. Harper* v. *Poway Unified School Dist.*, 445 F. 3d 1166, 1171 (CA9 2006) (upholding a school's ban of a shirt that read, "HOMOSEXUALITY IS SHAMEFUL"), vacated as moot, 549 U. S. 1262 (2007); *Parents Defending Education* v. *Olentangy Local School Dist. Bd. of Educ.*, 109 F. 4th 453, 464 (CA6) (holding that a school could satisfy *Tinker*'s material-disruption standard by relying on "common-sense conclusions based on human experience" to punish students for the "dehumanizing and humiliating effects of non-preferred pronouns" (internal quotation marks omitted)), reh'g en banc granted, 120 F. 4th 536 (CA6 2024).

Dept. of Chicago v. *Mosley*, 408 U. S. 92, 95 (1972). Otherwise, the government could purge entire topics from the public discourse. And as our cases recognize, these freedom-of-speech harms become "all the more blatant" when the government "targets not subject matter, but particular views taken by speakers on a subject." *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829 (1995).

Nor is there a carveout from this principle for controversial, offensive, or disfavored views. For example, we recently held unconstitutional a statute prohibiting the registration of "immoral or scandalous" trademarks, explaining that "a law disfavoring 'ideas that offend'" is "the 'essence of viewpoint discrimination.'" *Iancu* v. *Brunetti*, 588 U. S. 388, 393, 396 (2019) (quoting *Matal* v. *Tam*, 582 U. S. 218, 223, 249 (2017)). Indeed, the presumption against viewpoint discrimination is of such importance to our constitutional order that we have even applied it to categories of speech—like fighting words—that do not enjoy full First Amendment protection. See *R. A. V.* v. *St. Paul*, 505 U. S. 377, 391 (1992). So, for example, Congress could ban all fighting words, but it could not ban only those fighting words directed toward Protestants.

Unsurprisingly, the viewpoint-neutrality rule also applies to student speech. Students do not relinquish their First Amendment rights at school, see *Tinker*, 393 U. S., at 506, and by extension, a school cannot censor a student's speech merely because it is controversial, see *Mahanoy*, 594 U. S., at 190. As *Tinker* itself made clear, the viewpoint-neutrality rule plays an important role in safeguarding students' First Amendment right to express an "unpopular viewpoint" at school. 393 U. S., at 509. There, in holding unconstitutional the decision to prohibit students from wearing black armbands to protest the Vietnam War, we emphasized that the school authorities "did not purport to

prohibit the wearing of all symbols of political or controversial significance." *Id.*, at 510. "[S]tudents in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of Nazism." *Ibid.* The schools allowed this speech but not the armbands. We concluded that such viewpoint discrimination "is not constitutionally permissible." *Id.*, at 511.

L. M. raised a viewpoint-discrimination argument below. See Brief for Appellant in No. 23–1535 etc. (CA1), pp. 54–55, 64. Namely, he argued that NMS had endorsed and favored the expression of the view that "gender is identity-based" while "barring [his] contrary view that gender is sex-based." *Id.*, at 55. L. M. also noted our recent reaffirmation of the viewpoint-neutrality principle in cases like *Matal* v. *Tam* and *Iancu* v. *Brunetti*. Yet the First Circuit rejected that important argument in a footnote, stating: "We see no reason to take up L.M.'s invitation to be, as far as we can tell, the first court to import recent decisions that clearly did not contemplate the special characteristics of the public-school setting into that setting." 103 F. 4th, at 883, n. 9 (citing *Matal*, 582 U. S. 218; *Iancu*, 588 U. S. 388); see also 103 F. 4th, at 886, n. 11.

The court below erred, and badly so: the rule that viewpoint-based restrictions on speech are almost never allowed is not a new principle proclaimed only in "recent decisions" like *Matal* or *Iancu*. 103 F. 4th, at 883, n. 9. To the contrary, viewpoint neutrality has long been seen as going to "the very heart of the First Amendment." *Morse* v. *Frederick*, 551 U. S. 393, 423 (2007) (ALITO, J., concurring); cf. *Rosenberger*, 515 U. S., at 829–830. The First Circuit was wrong to expel this bedrock constitutional safeguard from our schools.[2]

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[2]See *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624, 642 (1943) (explaining that teachers and administrators cannot "prescribe what

B

The First Circuit also watered down the test adopted in *Tinker* for determining whether a school's restriction of student speech is allowed. Because free speech is the default and censorship the exception, *Tinker* set forth a "demanding standard." *Mahanoy*, 594 U. S., at 193. We held that a school can restrict speech when it has "evidence" that such restrictions are "necessary" to "avoid material and substantial interference with schoolwork or discipline."[3] *Tinker*, 393 U. S., at 511. Thus, absent a "specific showing" of such a disruption—like "threats or acts of violence on school premises"—this justification for suppressing student speech does not apply. *Id.*, at 508, 511.

Under this standard, NMS had no right to censor L. M. Like the black armbands in *Tinker*, L. M.'s shirts were a "silent, passive expression of opinion, unaccompanied by

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shall be orthodox in politics, nationalism, religion, or other matters of opinion"); *Bethel School Dist. No. 403* v. *Fraser*, 478 U. S. 675, 681 (1986) (affirming the "undoubted freedom to advocate unpopular and controversial views in schools and classrooms"); *Tinker* v. *Des Moines Independent Community School Dist.*, 393 U. S. 503, 511 (1969) ("In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved"); *Morse*, 551 U. S., at 409 (rejecting the argument that student "speech is proscribable [when] it is plainly 'offensive'" because "much political and religious speech might be perceived as offensive to some"); *Mahanoy Area School Dist.* v. *B. L.*, 594 U. S. 180, 190 (2021) ("[S]chools have a strong interest in ensuring that future generations understand the workings in practice of the well-known aphorism, 'I disapprove of what you say, but I will defend to the death your right to say it'"); *id.*, at 210 (ALITO, J., concurring) ("Speech cannot be suppressed just because it expresses thoughts or sentiments that others find upsetting"); *Lee* v. *Weisman*, 505 U. S. 577, 590 (1992) ("To endure the speech of false ideas or offensive content and then to counter it is part of learning how to live in a pluralistic society, a society which insists upon open discourse").

[3] *Tinker* also carves out student speech that "inva[des] . . . the rights of others," 393 U. S., at 513, but the First Circuit did not rely on that aspect of *Tinker*.

any disorder or disturbance on the part of petitione[r]." *Id.*, at 508. And just as in *Tinker*, some of L. M.'s classmates found his speech upsetting. Feeling upset, however, is an unavoidable part of living in our "often disputatious" society, and *Tinker* made abundantly clear that the "mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint" is no reason to thwart a student's speech. *Id.*, at 509. True, NMS also forecasted that L. M.'s shirts could lead to a "standoff" between students who support L. M.'s view and those who oppose it. 103 F. 4th, at 880. But the schools in *Tinker* were similarly worried that students "would wear arm bands of other colors" and that this could "evolve into something which would be difficult to control." 393 U. S., at 509, n. 3 (internal quotation marks omitted). If anything, the risk in *Tinker* was far less speculative than in this case. In *Tinker*, several students had already "made hostile remarks to the children wearing armbands," *id.*, at 508, and a math teacher "had his lesson period practically 'wrecked' chiefly by disputes with Mary Beth Tinker" over her armband, *id.*, at 517 (Black, J., dissenting). Even so, *Tinker* deemed the schools' concern an "undifferentiated fear" that could not "overcome the right to freedom of expression." *Id.*, at 508 (majority opinion).

Instead of applying *Tinker*'s speech-protective standards, the court below crafted a novel and permissive test that distorts the "material disruption" rule beyond recognition. The First Circuit identified a special category of speech, *i.e.*, speech that can be interpreted as demeaning a deeply rooted characteristic of personal identity. And if student speech, as interpreted by the school, falls into this category, the school may ban that speech if the school "reasonably forecast[s]" that it may have a "serious negative psychological impact on students with the demeaned characteristic." 103 F. 4th, at 873–874.

This rule cannot be squared with *Tinker*. The black armbands in that case also involved an emotionally charged topic, and the students in the Des Moines public schools were not somehow immune from those intense feelings. Justice Black made precisely this point in his dissent, writing: "Of course students . . . cannot concentrate on lesser issues when black armbands are being ostentatiously displayed in their presence to call attention to the wounded and dead of the war, some of the wounded and the dead being their friends and neighbors." 393 U. S., at 524; see also *id.*, at 518 ("[T]he armbands . . . took the students' minds off their classwork and diverted them to thoughts about the highly emotional subject of the Vietnam war"). Indeed, a "former student of one of [the] high schools was killed in Viet Nam," and "[s]ome of his friends [were] still in school." *Id.*, at 509, n. 3 (majority opinion) (internal quotation marks omitted). The *Tinker* Court nevertheless held that this stress and these distractions did not trump the students' constitutional rights.

The First Circuit's test dilutes *Tinker* in other ways too. To name just a few, it defines "material disruption" to include anything that correlates with "a decline in students' test scores, an upsurge in truancy, or other symptoms of a sick school," whatever that means. 103 F. 4th, at 870 (internal quotation marks omitted). That is a highly permissive standard, and it certainly requires far less than that which *Tinker* suggested would constitute a "material disruption." See 393 U. S., at 508 ("aggressive, disruptive action"); *ibid.* ("threats or acts of violence on school premises"); *ibid.* ("group demonstrations"); cf. *Mahanoy*, 594 U. S., at 192–193.

Further, the First Circuit's test demands that a federal court abdicate its responsibility to safeguard students' First Amendment rights and instead defer to school officials' assessment of the meaning and effect of speech. The court below, for example, deferred to the School administrators'

determination that L. M.'s shirts conveyed a message that demeaned others' personal identity. 103 F. 4th, at 879–880. That court also deferred to the administrators' speculation about the likely effects of the t-shirts on students—even though L. M.'s speech resulted in no actual disruptions, and even though NMS "was not aware of any prior incidents or problems caused by th[e] [shirts'] message[s]." *Id.*, at 882. That approach defies *Tinker*, in which we performed our own "independent examination of the record" without trusting school administrators' self-serving observations. 393 U. S., at 509.

Tinker's "material disruption" standard is demanding by design. That is because free speech is the rule, not the exception. The First Circuit's test flips that principle on its head.

C

One final point deserves comment. The First Circuit repeatedly emphasized that L. M.'s speech occurred in a middle school where children ranged in age from 10 to 14 years old—a point respondents echo in their brief in opposition. That should not make a difference. Mary Beth Tinker was a 13-year-old student in junior high school, yet the *Tinker* Court applied the same "material disruption" test to her as it did to the 15- and 16-year-old high school petitioners, John Tinker and Christopher Eckhardt. See *id.*, at 504. If a school sees fit to instruct students of a certain age on a social issue like LGBTQ+ rights or gender identity, then the school must tolerate dissenting student speech on those issues. If anything, viewpoint discrimination in the lower grades is more objectionable because young children are more impressionable and thus more susceptible to indoctrination.

* * *

"The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Shelton* v. *Tucker*, 364 U. S. 479, 487 (1960). So long as the First Circuit's opinion is on the books, thousands of students will attend school without the full panoply of First Amendment rights. That alone is worth this Court's attention. The problem, however, runs deeper: as this case makes clear, some lower courts are confused on how to manage the tension between students' rights and schools' obligations. Our Nation's students, teachers, and administrators deserve clarity on this critically important question. Because the Court has instead decided to let the confusion linger, I respectfully dissent.