No. 14-748

In the Supreme Court of the United States

VOLVO POWERTRAIN CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly held that a foreign company violated a consent decree entered in litigation under the Clean Air Act when its facilities were used to produce nonroad diesel engines (1) that did not comply with the emissions requirements set forth in the decree; and (2) for which certificates of conformity, allowing the engines to be imported into the United States, were voluntarily sought from the Environmental Protection Agency.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a–29a) is reported at 758 F.3d 330. The opinion of the district court (Pet. App. 30a–57a) is reported at 854 F. Supp. 2d 60.

JURISDICTION

The judgment of the court of appeals was entered on July 18, 2014. A petition for rehearing was denied on September 24, 2014 (Pet. App. 58a–59a). The petition for a writ of certiorari was filed on December 23, 2014. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This case involves a consent decree entered into by petitioner and the Environmental Protection Agency (EPA) in order to settle a lawsuit involving petition-

er's alleged violations of the Clean Air Act (CAA), 42 U.S.C. 7401 *et seq.* That decree required petitioner to ensure that nonroad engines manufactured at its facilities complied with certain emissions standards in circumstances where EPA certificates of conformity were sought authorizing the engines to be imported into the United States. See Pet. App. 60a-159a. In 2005, petitioner violated the consent decree when noncompliant engines were produced at its facility in Sweden and petitioner's corporate affiliate sought and obtained certificates of conformity for those engines from EPA. The district court awarded approximately $72 million in penalties and interest in accordance with the consent decree, and the court of appeals affirmed. *Id.* at 1a-29a, 56a.

1. a. Under Title II of the CAA, 42 U.S.C. 7521 *et seq.*, EPA must prescribe "standards applicable to the emission of any air pollutant from any class or classes of * * * new motor vehicle engines, which in [EPA's] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. 7521(a)(1). In 1977, Congress amended Title II to require the emissions standards for "heavy-duty" engines to reflect "the greatest degree of emission reduction achievable" through the application of available technology, based on consideration of cost, energy, and safety. 42 U.S.C. 7521(a)(3)(A)(i). Heavy-duty engines are used in trucks, buses, and other vehicles manufactured primarily for use on public roads and weighing more than 6000 pounds. See 42 U.S.C. 7521(b)(3)(C). EPA may revise those standards based on information about the effects of engine emissions on public health and welfare, taking costs into account. 42 U.S.C. 7521(a)(3)(B)(i).

In 1990, Congress again amended Title II to require EPA, after conducting a study and making certain findings, to promulgate emissions standards for "nonroad engines" that cause or contribute to air pollution. 42 U.S.C. 7547(a)(1)-(3). A "nonroad engine" is an internal combustion engine that is not used in a motor vehicle or is not subject to the emissions standards for motor vehicles. 42 U.S.C. 7550(10). Like the standards for heavy-duty engines, the nonroad engine standards must require "the greatest degree of emission reduction achievable" with available technology, based on consideration of cost and other factors. 42 U.S.C. 7547(a)(3).

b. To ensure compliance with emissions standards, Title II of the CAA comprehensively prohibits the sale, offering for sale, introduction into commerce, delivery for introduction into commerce, and importation of any new motor vehicle engine in the United States unless the "manufacturer"—a term defined to include importers, see 42 U.S.C. 7550(1)—obtains from EPA a certificate of conformity. 42 U.S.C. 7522(a)(1); see 42 U.S.C. 7547(d).[1] To obtain such a certificate, a manufacturer must select and test a representative engine and demonstrate that it will meet applicable emissions standards. See 42 U.S.C. 7525(a); 40 C.F.R. 1051.201-1051.255. If the representative engine satisfies those requirements, EPA "shall issue a certificate of conformity" for up to a year upon such terms as the agency chooses to prescribe. 42 U.S.C. 7525(a)(1).

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[1] For ease of reference, this brief will generally refer to Section 7522(a)(1)'s prohibitions as addressing the "sale" or "import" of engines in the United States.

There is no general requirement that domestic or foreign manufacturers must obtain EPA certificates of conformity for their engines. Rather, the decision whether to seek such a certificate is voluntary, and such certificates are necessary only if the manufacturer wishes to sell the engine in this country. "A certificate of conformity is, in effect, a license that allows an automobile manufacturer to sell vehicles" inside the United States. *United States* v. *Chrysler Corp.*, 591 F.2d 958, 960 (D.C. Cir. 1979).

Because of the robust secondary market for nonroad engines, EPA certificates of conformity are also valuable to manufacturers who initially sell their engines *outside* the United States. See *Independent Equip. Dealers Ass'n* v. *EPA*, 372 F.3d 420, 422-423 (D.C. Cir. 2004). Imported engines must be covered by a certificate of conformity. See 42 U.S.C. 7522(a)(1), 7550(1), (3); 40 C.F.R. 89.1003(a)(1)(ii). As a result, when an engine manufacturer obtains a certificate, its engines become more marketable, since they can then be sold in or imported into the United States. See 40 C.F.R. 89.110(a)(1) and (2) (requiring engines with EPA certificates of conformity to bear "a permanent and legible label" attesting to certification that is "durable and readable for the entire engine life").

EPA may later suspend or revoke a certificate of conformity if the agency determines that the engine covered by the certificate does not satisfy applicable emissions requirements. See 42 U.S.C. 7525(b)(2). Under EPA regulations, certificate holders must comply with a variety of requirements concerning not only emissions limitations, *e.g.*, 40 C.F.R. 89.112, but also, *inter alia*, labeling, 40 C.F.R. 89.110; recall lia-

bility, 40 C.F.R. 89.701 *et seq.*; emissions defect reporting, 40 C.F.R. 89.801 *et seq.*; warranty obligations, 40 C.F.R. 89.1007; and selective enforcement auditing, 40 C.F.R. 89.503.

Unless an engine is covered by a valid certificate of conformity, Title II generally prohibits "the sale, or the offering for sale, or the introduction, or delivery for introduction, into commerce" of the engine by the manufacturer and "the importation into the United States" of the engine by "any person." 42 U.S.C. 7522(a)(1). Manufacturers are also subject to various recordkeeping, information-collection, inspection, access, and reporting requirements to enable EPA to determine compliance with the CAA. See, *e.g.*, 42 U.S.C. 7525(c), 7542(a). Failure to comply with such requirements is likewise prohibited. See 42 U.S.C. 7522(a)(2)(A)-(D). Persons committing acts prohibited by the statute are subject to civil penalties through suits in federal district court or through administrative proceedings. See 42 U.S.C. 7524.

2. a. In the late 1990s, the United States brought civil enforcement actions against virtually all of the leading manufacturers of heavy-duty engines, including petitioner's corporate predecessor, Volvo Truck Corporation (Volvo Truck). The actions alleged CAA violations related to the use of computer software in the fuel-injection systems of the manufacturers' engines. The government alleged that, although the software improved the engines' fuel economy, it also increased nitrogen-oxide emissions during actual driving conditions as compared to test conditions. Pet. App. 31a; see *United States* v. *Caterpillar, Inc.*, 227 F. Supp. 2d 73, 77 (D.D.C. 2002) (discussing history of the enforcement actions).

Because the software's effect on nitrogen-oxide emissions had not been described in Volvo Truck's applications for certificates of conformity, the government alleged that the manufacturer had violated 42 U.S.C. 7522(a)(1) by selling engines that were not covered by valid certificates of conformity. The government also alleged that Volvo Truck should have known that installing the software defeated the engines' emissions controls, in violation of 42 U.S.C. 7522(a)(3)(B), and that Volvo Truck had failed to provide EPA with complete and accurate information about the software settings, in violation of 42 U.S.C. 7522(a)(2)(A).

b. The government conducted concurrent settlement negotiations with Volvo Truck and the other manufacturer defendants in the related enforcement actions. The various parties negotiated separate, but substantially similar, consent decrees. See Pet. App. 62a-159a (Volvo Truck consent decree).

As part of its consent decree, Volvo Truck agreed to implement stricter emissions standards on certain nonroad engines one year in advance of the date when the regulations otherwise required it to do so—a provision known as the nonroad "pull-ahead" requirement. Pet. App. 103a. The government sought that commitment from the manufacturers in order to offset a portion of the millions of tons of emissions that were attributable to the use of the software in the manufacturers' heavy-duty engines. Volvo Truck did not manufacture nonroad engines, but its sister company, Volvo Construction Equipment (Volvo Construction), did. The pull-ahead requirement was memorialized in paragraph 60 of the decree, which provides in relevant part as follows:

> All Nonroad [Combustion Ignition] Engines manufactured by [Volvo Truck], or its affiliate, [Volvo Construction], on or after January 1, 2005, with a horsepower equal to or greater than 300 but less than 750 shall meet 3.0 g/bhp-hr for [oxides of nitrogen] plus [non-methane hydrocarbon] when measured on the applicable [federal test procedure] for those engines. In addition, all Nonroad [Combustion Ignition] Engines Manufactured by VCE or VTC on or after January 1, 2005, with a horsepower equal to or greater than 300 but less than 750 shall comply with all other requirements that would apply as if the engines were Model Year 2006 engines.

Ibid.

The consent decree contains "Noncircumvention Provisions" intended to ensure, *inter alia*, that Volvo Truck's facilities will not be used by other entities to manufacture engines that violate the decree's requirements. To that end, paragraph 110 provides that

> All [heavy-duty diesel engines] and Nonroad [Combustion Ignition] Engines manufactured at any facility owned or operated by [Volvo Truck] on or after January 1, 1998, for which a Certificate of Conformity is sought, must meet all applicable requirements of this Decree, regardless of whether [Volvo Truck] still owned, owns, operated, or operates that facility at the time the engine is manufactured.

Pet. App. 127a-128a.

The consent decree included provisions by which Volvo Truck agreed to pay stipulated penalties if certain violations of the decree occurred, as well as dis-

pute-resolution provisions. Pet. App. 130a-143a, 146a. The dispute-resolution procedures require a period of informal negotiation, followed by an exchange of written statements of position, and an opportunity for Volvo Truck to file with the district court a "motion for judicial review of the dispute," to which the government can respond. *Id.* at 148a. The decree further provides that the district court retains jurisdiction over the case after entry of the decree for the purpose of (1) allowing the parties to apply "at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification" of the decree, and (2) "effectuat[ing] or enforc[ing] compliance with its terms, or * * * resolv[ing] disputes in accordance with the dispute resolution procedures." *Id.* at 154a.

After the Department of Justice requested and responded to public comments on the proposed consent decree, see 63 Fed. Reg. 59,334 (Nov. 3, 1998); *id.* at 66,820 (Dec. 3, 1998), the district court entered the decree in July 1999. In 2002, petitioner informed the district court that it had assumed Volvo Truck's responsibilities under the decree. Pet. App. 7a-8a.

3. Several years later, the government received allegations that a corporation affiliated with petitioner had obtained certificates of conformity for model-year 2005 nonroad engines manufactured at petitioner's facilities without satisfying the pull-ahead provision in the consent decree. After reviewing its certification records, EPA discovered that Volvo Penta had requested and obtained certificates for 8354 model-year 2005 nonroad engines manufactured at petitioner's facilities, and that the engines were not certified to the more stringent, model-year 2006 emissions stand-

ards, as the decree required. The government sent petitioner a letter demanding approximately $72 million in penalties and interest for petitioner's violations of the decree. Pet. App. 175a-177a.

Petitioner invoked the consent decree's dispute-resolution procedures. See Pet. App. 9a. The parties were unable to resolve the dispute informally, and petitioner sought judicial review by filing a motion with the district court. See *ibid.* The California Air Resources Board was granted leave to intervene to resolve a parallel dispute with petitioner over alleged violations of a settlement agreement nearly identical to the decree. See *ibid.* After briefing and oral argument, the district court issued a written opinion denying petitioner's motion. Pet. App. 30a-57a.

First, the district court considered whether the consent decree covers engines produced by petitioner but submitted for certification by its sister corporation. Pet. App. 35a. The court held that the decree applies in this circumstance because "[a]ll non-road engines built at [petitioner's] facility and submitted for certification by the EPA are covered by Paragraph 110 of the consent decree and required to conform to the non-road pull-ahead" requirement. *Ibid.* In reaching that conclusion, the court emphasized that paragraph 110 applies the pull-ahead requirement to all nonroad engines "manufactured at" a facility owned or operated by petitioner at any time after 1998 "for which a Certificate of Conformity is sought," "regardless of" who owns or operates the facility at the time of manufacture. *Id.* at 38a.

The district court also addressed petitioner's "fallback" argument that only engines introduced into domestic commerce are covered by the consent de-

cree. The court held that a consent decree may require more than the statute under which the suit was brought, and that the requirements of paragraph 110 unambiguously apply to all nonroad engines for which certificates are sought, regardless of whether EPA could have regulated the engines produced for sale abroad. Pet. App. 47a.

The district court found that 8354 model-year 2005 engines were produced at petitioner's facility and labeled for importation as EPA-certified nonroad engines, and that those nonroad engines did not comply with the model-year 2006 emissions standards. Pet. App. 48a. Accordingly, the court held that the engines had been manufactured and submitted for certification in violation of the consent decree. *Ibid.*

The district court then considered the appropriate remedy for petitioner's violations of the consent decree. The court held that, although the literal terms of the decree's stipulated-penalty provision (paragraph 116) did not apply to the violations at issue, the provision did not constrain the court's authority to fashion an equitable remedy for the decree violations. Pet. App. 51a. After considering the stipulated-penalty provision and the penalties paid by a different manufacturer to comply with a pull-ahead emission standard in its own consent decree, the court ordered petitioner to pay approximately $66 million in penalties. *Id.* at 51a-52a. The court also awarded approximately $6 million in pre-demand interest. *Id.* at 52a.

4. The court of appeals affirmed. Pet. App. 1a-29a. The court held that the pull-ahead requirement "unambiguously applies" to the engines at issue. *Id.* at 13a. Applying "general principles of contract law" to interpret the consent decree, the court explained that,

because certificates of conformity were sought for nonroad engines manufactured at petitioner's facilities, the engines were required to meet all applicable decree requirements, including the nonroad pull-ahead provision. *Id.* at 14a.

The court of appeals also held that the engines fell within the consent decree's definition of nonroad engines regardless of whether they had actually been imported into the United States. Pet. App. 19a-22a. The court rejected petitioner's argument that the decree should be interpreted more narrowly in order to avoid extraterritorial applications of the CAA. See *id.* at 20a-21a. The court explained that, "because a manufacturer brings itself within the jurisdiction of the United States when it affirmatively *asks* EPA to issue certificates of conformity, there is no issue of extraterritoriality here." *Id.* at 21a. Finally, the court held that the district court had not abused its discretion when calculating the approximately $66 million in penalties at issue. *Id.* at 24a-27a.

ARGUMENT

Petitioner argues (Pet. 13-31) that the courts below misconstrued the consent decree by imposing liability for extraterritorial conduct that is outside the scope of the CAA. Specifically, petitioner contends (Pet. 13) that the courts erred by assessing penalties for 7262 engines that petitioner had built at its facility in Sweden for Volvo Penta, and for which Volvo Penta had obtained certificates of conformity from EPA, but which petitioner asserts were never sold in the United States. The court correctly interpreted the unambiguous language of the decree to encompass those engines, and its decision does not conflict with any deci-

sion of this Court or any other court of appeals. Further review is not warranted. [2]

1. The court of appeals correctly interpreted the consent decree to apply to the Volvo Penta engines at issue here. That result follows from the plain language of the decree. Paragraph 110 of the decree states that "all" nonroad compression-ignition engines "manufactured at any facility owned or operated by [Volvo Truck] on or after January 1, 1998, for which a Certificate of Conformity is sought, must meet all applicable requirements of this Decree." Pet. App. 127a-128a; see *id.* at 72a (indicating that consent decree binds Volvo Truck's successors, *i.e.*, petitioner); see also *id.* at 14a. One of the "applicable requirements of this Decree" cross-referenced in paragraph 110 is the pull-ahead requirement set forth in paragraph 60. *Id.* at 103a; see *id.* at 14a.

Petitioner does not dispute that (1) the Volvo Penta engines at issue here were manufactured at petitioner's facility, (2) the engines did not satisfy the pull-

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[2] Petitioner no longer disputes (Pet. 13) the penalties assessed with respect to 1092 of the 8354 Volvo Penta engines that gave rise to the penalties awarded below. It challenges (Pet. 13) only the penalties assessed with respect to the 7262 remaining engines, on the ground that those engines were never imported into the United States. The district court did not conduct an evidentiary hearing or make factual findings with respect to how many of the engines at issue ultimately entered into the United States, because it held that petitioner had violated the consent decree with respect to all 8354 engines for which EPA certificates of conformity were sought. See 1/31/12 Hr'g Tr. 28-29 (district court and petitioner's counsel agreeing that court could not make relevant factual findings on existing record without discovery or hearing). The government disputes petitioner's unsupported assertion (Pet. 13) that 7262 engines "were never offered for sale, sold, or imported within the boundaries of this country."

ahead requirement, and (3) Volvo Penta nonetheless obtained certificates of conformity for the engines from EPA. Pet. App. 12a-14a; see Pet. C.A. Br. 8-9. Petitioner therefore violated the consent decree by failing to ensure that the engines manufactured at its facility satisfied the decree's requirements. The courts below correctly held petitioner liable and assessed penalties for its violation of the decree.

2. Petitioner does not argue that the court of appeals' interpretation of the consent decree, or its straightforward application of that decree to the facts of this case, is inconsistent with any precedent of this Court. Nor does it allege that the decision below conflicts with any decision by any other court of appeals interpreting petitioner's own consent decree or any similar decree. Instead, petitioner contends (Pet. 14-20) that the court of appeals misconstrued the decree to impose liability for extraterritorial conduct to which the CAA does not apply. In petitioner's view, the decree imposes liability only with respect to engines that are actually imported into the United States.

Petitioner's contentions lack merit. As the court of appeals correctly held, the consent decree "unambiguously applies" to the engines at issue. Pet. App. 13a. Petitioner is wrong to argue that its liability under the consent decree extends no further than its liability under the CAA itself, and it is also wrong to argue that the presumption against extraterritorial application of federal statutes has any bearing on this case. The consent decree does not regulate foreign emissions for their own sake. Rather, the relevant provision of that decree applies only to engines for which a manufacturer requests an EPA certificate of conform-

ity, the whole purpose of which is to allow the engine to be sold in or imported into the United States.

a. Petitioner's argument rests on its premise that, because a particular CAA provision (42 U.S.C. 7522(a)(1)) does not authorize EPA to impose penalties on engine manufacturers with respect to engines that are never imported to or offered for sale in the United States, the consent decree must be given a similarly narrow reading. That logic is flawed. It is neither illegal nor anomalous for a consent decree to impose obligations that go beyond those imposed by the governing statute.

The "voluntary nature of a consent decree is its most fundamental characteristic." *Local No. 93, Int'l Ass'n of Firefighters* v. *City of Cleveland*, 478 U.S. 501, 521-522 (1986) (*Firefighters*). It is "the agreement of the parties, rather than the force of the law upon which the complaint was originally based, that creates the obligations embodied in a consent decree." *Id.* at 522. As a result, "whatever * * * limitations Congress placed" on the remedies available for the violation of a statute "simply do not apply when the obligations are created by a consent decree." *Id.* at 522-523. Parties therefore can agree to relief that is broader than the relief a court could have awarded after trial if the claims had been fully adjudicated. *Id.* at 525 (citing, *inter alia*, *Swift & Co.* v. *United States*, 276 U.S. 311, 327-331 (1928), and *Pacific R.R.* v. *Ketchum*, 101 U.S. 289, 295-297 (1880)).

In articulating the standard for modifying a consent decree, the Court has similarly explained that the parties to the original suit "could settle the dispute over the proper remedy for the constitutional violations that had been found by undertaking to do more

than the Constitution itself requires * * * , but also more than what a court would have ordered absent the settlement." *Rufo* v. *Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 389 (1992). Taken together, *Firefighters* and *Rufo* confirm the longstanding principle that "[p]arties to a suit have the right to agree to any thing they please in reference to the subject-matter of their litigation, and the court, when applied to, will ordinarily give effect to their agreement, if it comes within the general scope of the case made by the pleadings." *Pacific R.R.*, 101 U.S. at 297; see *Swift*, 276 U.S. at 327.

The fact that the United States is a party to the consent decree at issue here does not alter the principles described above. Congress has vested the Attorney General with authority to conduct and supervise litigation on behalf of the United States, including with respect to the CAA. See 28 U.S.C. 516, 519 (general provisions); 42 U.S.C. 7605 (CAA). Such authority includes the power to compromise claims through consent decrees.[3] And such decrees can impose requirements that go beyond the underlying statutory directives that the United States seeks to enforce by bringing the litigation. See *Swift*, 276 U.S. at 331

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[3] See, *e.g.*, *Swift*, 276 U.S. at 331; *Confiscation Cases*, 74 U.S. (7 Wall.) 454, 458 (1869); *United States* v. *Hercules, Inc.*, 961 F.2d 796, 798 (8th Cir. 1992); *United States* v. *Newport News Shipbuilding & Dry Dock Co.*, 571 F.2d 1283, 1287 (4th Cir.), cert. denied, 439 U.S. 875 (1978); see also Exec. Order No. 6166, § 5, June 10, 1933 (5 U.S.C. 901 note); *Power of the Attorney General in Matters of Compromise*, 38 Op. Att'y Gen. 124, 126 (1934) (stating that the Attorney General has the power to "compromise any case on such terms as he sees fit," and that this power "is in part inherent [in the Attorney General's] office and in part derived from various statutes and decisions").

("[W]e do not find in the statutes defining the powers and duties of the Attorney General any * * * limitation" on entering into a consent decree that contains broader prohibitions than does the underlying statute.). Indeed, the entire pull-ahead requirement that is at issue in this case reflected the parties' voluntary agreement to go beyond the requirements imposed by the CAA itself, in order to provide the environmental remediation the United States deemed necessary in light of petitioner's prior violations of the statute.[4]

The relevant provisions of the consent decree here advance the core goals of the CAA. An EPA certificate of conformity has the practical effect of a license to sell or import the engine into the United States. Once that permission has been granted, it is unlikely that either petitioner or the government could track the end use of the Volvo Penta engines or determine whether and when any such engine crossed the border

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[4] Courts have sometimes rejected settlement agreements that required the United States to take actions in violation of federal law. See, *e.g.*, *United States* v. *Carpenter*, 526 F.3d 1237, 1242 (9th Cir. 2008) (alleging that the United States had granted a county a property interest in public land without complying with statutory procedures for relinquishing title or issuing rights-of-way), cert. denied, 556 U.S. 1147 (2009); *Executive Bus. Media, Inc.* v. *U.S. Dep't of Def.*, 3 F.3d 759, 761 (4th Cir. 1993) (alleged failure of the Department of Defense to comply with regulations for competitive bid procedures); but see *Settlement Authority of the United States in Oil Shale Cases*, 4B Op. O.L.C. 756, 758 (1980) ("[T]he Attorney General—in the exercise of his settlement responsibilities—is not bound by each and every statutory limitation and procedural requirement that Congress may have specifically imposed upon some other agency head in the administration of that agency's programs."). The consent decree at issue here does not require the government to take any action forbidden by other provisions of law.

into the United States. Pet. App. 22a.[5] To ensure that all engines manufactured at petitioner's facility that ultimately reach this country satisfy the pull-ahead requirement, it therefore was necessary and appropriate for the consent decree to link that requirement to the submission of a request for a certificate of conformity. See Pet. App. 42a (emphasizing that the "benefit for which the [United States] bargained" in the consent decree is the "ease and certainty of application [of the pull-ahead requirement]").

b. Petitioner also argues (Pet. 17) that paragraph 62 of the consent decree "expressly limit[s]" the scope of EPA's authority to enforce the pull-ahead requirements to its "domestic enforcement authority under the CAA." Petitioner is mistaken. Paragraph 62 states only that, with respect to nonroad engines subject to the pull-ahead requirement, EPA "may" exercise enforcement authority under its regulations or under the CAA. Pet. App. 104a (noting, *inter alia*, that EPA may "tak[e] enforcement action against prohibited acts"); see 42 U.S.C. 7523, 7524 (authorizing EPA to initiate CAA enforcement actions to restrain prohibited acts and assess civil penalties). It does not indicate that such authority is the *exclusive* means by which the government may obtain redress for a violation of the decree.

On the contrary, the consent decree itself makes clear that alternative avenues exist through which the government may enforce the decree. For example, as occurred here, the government may demand stipulated penalties from petitioner for certain violations of

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[5] See Pet. C.A. Reply Br. 30 (conceding that "it may be difficult to track the precise destination and current use of every single engine throughout the world").

the decree. Pet. App. 130a-143a. In response to such a demand, petitioner may exhaust the dispute-resolution procedures specified in the decree and, if necessary, may invoke the district court's jurisdiction by filing a motion for judicial review of any dispute concerning that demand. *Id.* at 146a-149a. The consent decree thus expressly contemplates that the decree may be enforced through judicial proceedings (like the proceedings in this case) that are distinct from CAA enforcement actions brought by the government under 42 U.S.C. 7523 and 7524.

The consent decree further provides that the parties may "apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction" of the decree or "to effectuate or enforce compliance with its terms." Pet. App. 154a. That is a broad allowance for relief beyond the ordinary enforcement actions that EPA may bring under the CAA. See *id.* at 104a.[6] Petitioner is accordingly mistaken to suggest that the parties intended to limit EPA's enforcement authorities to those referenced in paragraph 62 of the decree.

c. Petitioner repeatedly invokes (Pet. 13-16, 19) the canon of statutory interpretation that "legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." *EEOC* v. *Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991). The presumption against

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[6] The consent decree also makes clear that, in addition to the payment of the penalties expressly stipulated in the decree, "the United States specifically reserves all other rights and remedies which may be available to the United States by reason of [Volvo Truck's] failure to comply with the requirements of this Consent Decree." Pet. App. 142a.

extraterritorial effect does not support petitioner's position in this case.

As a general matter, the CAA does not require engine manufacturers to obtain EPA certificates of conformity for engines that are never delivered to, or sold in, the United States. That is clear from the CAA's text and EPA's implementing regulations, and it is reinforced by the presumption against extraterritoriality.[7] The courts below, however, found petitioner liable under the consent decree, not under the CAA itself. See pp. 9-11, *supra*.

Petitioner also invokes the presumption against extraterritoriality as a ground for construing the consent decree to exclude the engines at issue here. Pet. 19 (citing *Kiobel* v. *Royal Dutch Petroleum Co.*, 133 S. Ct. 1659 (2013)). Petitioner cites no decision that has used the presumption as a tool for interpreting a contract, settlement agreement, or consent decree. But even if that interpretive method might sometimes be appropriate, petitioner is wrong in arguing that the decision below constitutes extraterritorial application of the consent decree.

"[B]ecause a manufacturer brings itself within the jurisdiction of the United States when it affirmatively *asks* EPA to issue certificates of conformity, there is no issue of extraterritoriality here." Pet. App. 21a. Paragraph 110 of the consent decree applies only to nonroad engines "for which a Certificate of Conformity is sought." *Id.* at 127a-128a. Those certificates are

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[7] As petitioner points out (Pet. 2-3, 5, 13, 16, 21), the government advanced this interpretation of the CAA in the D.C. Circuit in *Independent Equipment Dealers Ass'n* v. *EPA*, 372 F.3d 420 (2004). See EPA Br., *Independent Equip.*, *supra*, No. 03-1020, 2003 WL 23003369, at *38-*40 (D.C. Cir. Dec. 11, 2003).

issued in the United States by an agency of the United States government; their core purpose is to authorize the sale of the engine within the United States or its importation into this country; and they directly implicate the sovereign authority of the United States to regulate the items that may potentially cross the Nation's borders and be offered for sale here. See generally *United States* v. *Chrysler Corp.*, 591 F.2d 958, 960 (D.C. Cir. 1979) ("A certificate of conformity is, in effect, a license that allows an automobile manufacturer to sell vehicles to the public [inside the United States]."). By regulating the terms under which those certificates could be requested, the consent decree regulated domestic conduct, even with respect to engines manufactured outside the United States.

For similar reasons, petitioner is also wrong to suggest (Pet. 4) that EPA's effort to enforce the consent decree here amounts to "regulat[ing] foreign emissions" for their own sake. Volvo Penta had no obligation to seek EPA certificates of conformity for the engines at issue here, and petitioner would not be in violation of the consent decree if Volvo Penta had declined to do so. But because a certificate of conformity authorizes the importation and sale of an engine within the United States, and because it is generally infeasible to track the movement of particular engines for which such certificates have been issued, paragraph 110 is an appropriate means of preventing non-compliant engines from entering this country and emitting pollution here. See pp. 3-5, 16-17, *supra*. The fact that paragraph 110 applies only to nonroad engines "for which a Certificate of Conformity is sought," Pet. App. 127a-128a, refutes petitioner's

contention that the decree is intended to regulate foreign emissions.

Petitioner's reliance (Pet. 2-3, 5, 13, 16, 21) on the government's D.C. Circuit brief in *Independent Equipment Dealers Ass'n* v. *EPA*, 372 F.3d 420 (2004), is misplaced. That case involved the requirements of the CAA, not of a consent decree. See note 7, *supra*. Although the government's brief in *Independent Equipment* agreed that the CAA does not require certificates of conformity for engines that will never be sold or imported in the United States, that brief did not state or imply that a foreign company's request for an EPA certificate of conformity involves purely extraterritorial conduct. There is no inconsistency between the positions advanced by the government in *Independent Equipment* and in this case.

The CAA itself reflects the United States' legitimate interest in regulating both the circumstances under which certificates of conformity are obtained from EPA, and the circumstances under which companies manufacture engines covered by such certificates. For example, the CAA authorizes EPA to take enforcement action against various "prohibited acts." 42 U.S.C. 7522(a)(2). Those acts include violations of CAA testing, reporting, and inspection provisions that apply to, *inter alia*, engine manufacturers who voluntarily seek certificates of conformity for their engines.[8] The CAA imposes liability for those prohibited acts regardless of whether the manufacturer's engines

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[8] See 42 U.S.C. 7522(a)(2); see also 42 U.S.C. 7525, 7542, 7547(d); 40 C.F.R. 89.119, 89.129, 89.503, 89.504, 89.506, 89.1003(a)(2), 89.1004, 89.1006(a) (subjecting manufacturers to potential liability, in accordance with 42 U.S.C. 7522(a)(2), by virtue of their efforts to obtain EPA certificates of conformity).

are ultimately sold in the United States. The CAA therefore reflects Congress's judgment that, in certain circumstances, a company can bring itself within the CAA's reach by seeking and securing a certificate of conformity from EPA, even if other aspects of its conduct occur outside this country. Paragraph 110 of the consent decree at issue here reflects the same judgment.

d. For the reasons explained above, petitioner is wrong to assert that the court of appeals misconstrued the consent decree or that EPA improperly sought penalties for violations of the decree. Petitioner is therefore also wrong (Pet. 20-25) to suggest that the Court's review is necessary to curb executive overreach by EPA or to "constrain the administrative state within its proper constitutional sphere."

This case concerns the proper interpretation of a single consent decree—an instrument that was "entered into by parties to a case after careful negotiation ha[d] produced agreement on [its] precise terms." *United States* v. *Armour & Co.*, 402 U.S. 673, 681 (1971). By entering into the decree—which "normally embodies a compromise"—petitioner "g[a]ve up something [it] might have won had [it] proceeded with the litigation," in exchange for "the saving of cost and elimination of risk" of what it might have lost. *Ibid.* Because the government sought only to enforce an obligation that petitioner had voluntarily accepted, this case would not be a suitable vehicle for considering broader questions about the limits on unilateral agency conduct.

3. Although petitioner does not allege any split of authority over the questions presented, it urges (Pet. 25) this Court to grant review "to resolve circuit court

confusion over the judicial treatment of regulatory consent decrees." Specifically, petitioner asserts (Pet. 26-31) that there is confusion about (1) the extent to which a consent decree may vary from the statute giving rise to the underlying litigation, and (2) the principles that courts should apply when interpreting such decrees. Those arguments lack merit.

a. As explained above, a consent decree may impose obligations, and authorize relief, beyond those established and authorized by the statute that gave rise to the underlying litigation. See pp. 13-16, *supra*; *Firefighters*, 478 U.S. at 522-525. Petitioner does not appear to dispute this point. See Pet. 26-27 (acknowledging *Firefighters*). Petitioner correctly observes that a consent decree must "further the objectives of the law upon which the complaint was based" and must not "conflict[] with or violate[] the statute upon which the complaint was based." Pet. 27 (quoting *Frew* v. *Hawkins*, 540 U.S. 431, 437 (2004), and *Firefighters*, 478 U.S. at 526); see note 4, *supra*. But both of those requirements are already generally accepted, both by the parties in this case and by the courts of appeals.

Both requirements are also satisfied here. The consent decree (1) imposes a pull-ahead requirement to compensate for petitioner's prior alleged violations of the CAA, and (2) creates a workable mechanism for enforcing that pull-ahead requirement with respect to any covered engines that might be imported for sale in the United States. See Pet. App. 42a; pp. 16-17, *supra*. By seeking to reduce post-decree emissions within the United States, the consent decree furthers governmental objectives that are legitimate, important, and squarely rooted in the purposes of the

CAA. Nothing in the decree conflicts with the CAA or requires either petitioner or EPA to violate the statute.

b. Petitioner is also wrong to suggest (Pet. 27-30) that this case implicates confusion over the rules that generally govern judicial interpretation of consent decrees. Petitioner posits (Pet. 27-28) a conflict between this Court's allegedly "inconsistent holdings" in *Armour*, 402 U.S. at 682, and *United States* v. *ITT Continental Baking Co.*, 420 U.S. 223, 236-237 (1975). According to petitioner, *Armour* sets forth a strict rule by which a consent decree must be interpreted only "'within its four corners' and not by reference to any purpose of the parties or of underlying statutes," Pet. 27 (quoting *Armour*, 402 U.S. at 682), whereas *ITT Continental Baking* directs courts to interpret such decrees in light of the statute giving rise to the litigation, Pet. 28-29.

In fact, there is no conflict between the two decisions. In *ITT Continental Baking*, this Court expressly reaffirmed *Armour*'s basic rule that a consent decree must "be construed for enforcement purposes basically as a contract," with a focus on the "four corners" of the decree itself. 420 U.S. at 238. The Court further explained, however, that—just as with other contracts—"reliance upon certain aids to construction is proper" in circumstances where the decree's terms are ambiguous. *Id.* at 238 & n.11. The Court noted that such aids include "the circumstances surrounding the formation of the consent order, any technical meaning words used may have had to the parties, and any other documents expressly incorporated in the decree." *Id.* at 238.

The Court in *ITT Continental Baking* then considered the "specialized meaning" that the words of the consent order at issue had acquired "in the antitrust field, since [the parties] were composing a legal document in settlement of an antitrust complaint." 420 U.S. at 240. In conducting that analysis, the Court looked to the way that some of those words were used in the Clayton Act, 15 U.S.C. 12 *et seq.* *ITT Cont'l Baking*, 420 U.S. at 240. The Court emphasized, however, that its interpretive approach "d[id] not in any way depart from the 'four corners' rule of *Armour*." *Id.* at 238.

Petitioner cites (Pet. 28-30) various court of appeals decisions in an effort to show that there is confusion over how to interpret consent decrees. But the cited decisions are entirely consistent with the general approach set forth in *ITT Continental Baking*. None of those decisions rejects the *ITT Continental Baking* framework or suggests that the broad purposes of the underlying statutory scheme can supersede the unambiguous language of a consent decree.[9]

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[9] The two decisions that petitioner identifies (Pet. 28-29) as applying "the pre-*ITT Continental Baking* rule" expressly *embrace* that decision's statement of the operative legal standard. See *Sierra Club* v. *Meiburg*, 296 F.3d 1021, 1031 (11th Cir. 2002); *Paralyzed Veterans of Am., Inc.* v. *Washington Metro. Area Transit Auth.*, 894 F.2d 458, 461-462 (D.C. Cir. 1990) (per curiam). Petitioner is also mistaken to assert (Pet. 30) that the Tenth Circuit's decision in *Biodiversity Assocs.* v. *Cables*, 357 F.3d 1152, cert. denied, 543 U.S. 817 (2004), departs from *ITT Continental Baking* by "reject[ing] the contract paradigm altogether." In fact, the court in *Biodiversity Associates* acknowledged that consent decrees are contractual in nature, but also emphasized that such degrees must advance statutory objectives. See 357 F.3d at 1169.

In any event, this case does not implicate any of the alleged confusion that petitioner identifies. The court of appeals correctly held that the plain language of the consent decree "unambiguously" encompasses the engines at issue here. Pet. App 13a. Petitioner asks this Court to rely on the CAA to impose an additional requirement—that the engines have actually been sold or imported for sale in the United States—for liability under the decree. But neither *ITT Continental Baking* nor this Court's other decisions permit a court to add new terms to an unambiguous consent decree based solely on the purposes of the statute that gave rise to the underlying litigation. The Court should reject petitioner's effort to rewrite the unambiguous terms of the decree to which it voluntarily acceded.

4. Finally, the interpretation of the consent decree at issue here is unlikely to have any ongoing significance. The pull-ahead and noncircumvention provisions appear in the consent decrees that the government entered into with petitioner and other settling heavy-duty engine manufacturers, but they are not typical of most such settlements. The highly fact-bound nature of the dispute in this case provides a further reason for this Court to deny review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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