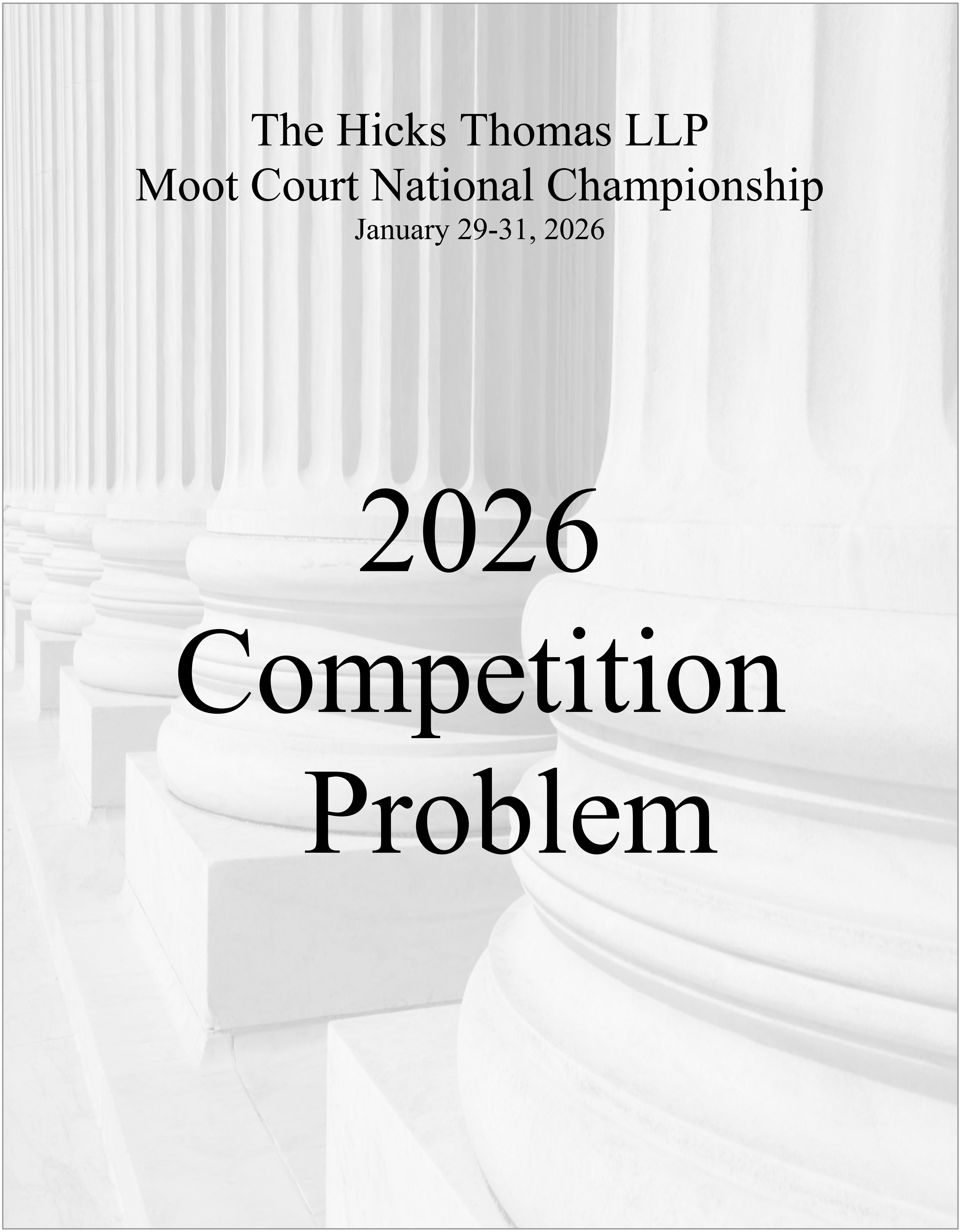

The Hicks Thomas LLP
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(ORDER LIST: 606 U.S.)

MONDAY, October 6, 2025

CERTIORARI GRANTED

24-2187 GALACTIC EMPIRE, INC. and UNITED STATES V. SOLO, HAN

The petition for writ of certiorari is granted limited to the following questions: 1) Whether the district court properly exercised venue in this civil lawsuit involving torts committed and damages sustained in outer space? 2) Whether the district court properly interpreted and applied the Commercial Space Launch Activities Act, 51 U.S.C. § 50901 et seq.?

UNITED STATES COURT OF APPEALS
FOR THE SIXTEENTH CIRCUIT

No. 22-cv-1138

GALACTIC EMPIRE, INC.,
Defendant-Appellant, and

THE UNITED STATES OF AMERICA,
Intervenor-Appellant,

v.

HAN SOLO,
Plaintiff-Appellee.

Filed: May 4, 2023

Appeal from the United States District Court
for the District of Alderaan
(D.C. No. 19-cv-421(TK))

Before YODA, Chief Judge, REVAN, KENOBI, JINN, WINDU, TANO, and WALT, Circuit Judges.

JINN, J., announced the Judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, III.A., III.B.1., and IV, in which YODA, C.J., and REVAN, KENOBI, WINDU, and TANO, JJ., joined and an opinion with respect to Parts III.B.2., III.C. and III.D. in which REVAN, KENOBI, and TANO, JJ., joined.

WINDU, J., filed an opinion concurring in part and concurring in the judgment, in which YODA, C.J., joined.

WALT, J., filed a dissenting opinion.

OPINION EN BANC

JINN, Circuit Judge, Joined by REVAN, KENOBI, and TANO, Circuit Judges.

Not so long ago, in a galaxy not so far away, a Tunisian moisture farmer named Luke Skywalker fired a one-in-a-million shot to destroy a space station in low Earth orbit. The explosion caused injury to a nearby spacefarer, Han Solo. Solo sued Skywalker and others for property damage and bodily injuries.

"Always in motion is the future." Nevertheless, Congress apparently anticipated these kinds of space torts might happen. Congress enacted a statutory scheme governing these claims, *see* 51 U.S.C. § 50901 *et seq.*, and in that chapter, Congress specifically authorized U.S. district courts to exercise exclusive jurisdiction over such lawsuits.

But Congress did not say *which* district court(s) should hear these claims. Congress also provided little guidance about the standards by which courts are supposed to determine liability for civil damages in such lawsuits.

We grapple with both questions in this appeal.

I.

A.

In 2012, appellant Galactic Empire, Inc. (the "Empire") announced plans to design, launch, construct, and operate a "planetary defense system" known as the DS-1. That announcement was met with international outrage and claims that the DS-1 would violate an international treaty that prohibits the placement of weapons of mass destruction into Earth's orbit. Nevertheless, the Empire proceeded to launch supplies into low Earth orbit and to construct the DS-1 under license from the United States government.

In 2017, while under construction in low Earth orbit, the DS-1 was attacked and destroyed by a Tunisian citizen, Luke Skywalker. Skywalker blew up the DS-1 by firing a proton torpedo from his Incom T65-B X-wing starfighter, which was launched from Guatemala with the apparent assistance from a Guatemalan company, Alianza Rebelde S.A. Although the launch occurred in Guatemala, the space launch and attack occurred without the knowledge or approval of the Republic of Guatemala.

The explosion of the DS-1 created thousands of fragments. Some of those fragments struck other artificial satellites also orbiting in low Earth orbit. Some fragments de-orbited and landed on Earth (primarily in the U.S. State of Alderaan). Finally, some DS-1 fragments struck and damaged another spaceship, the *Millennium Falcon*, which was being flown for tourism purposes by Han Solo, a U.S. billionaire.

Solo sued Skywalker, Alianza Rebelde, the Republic of Guatemala, and the Empire for bodily injury and property damage. The United States intervened in that lawsuit. Following a jury trial and the rendition of judgment for Solo, the only remaining parties—and the only parties to this appeal—are Solo, the Empire, and the United States.

As best we can determine, this is the first lawsuit (and first appeal) ever brought under the Commercial Space Launch Activities Act (CSLAA), 51 U.S.C. § 50901 *et seq*. This appeal involves several issues that either are the subject of a circuit split or are questions of first impression. They include questions about venue and statutory interpretation. These questions ask:

- Who bears the burden when a defendant challenges a plaintiff's choice of venue as improper under Rule 12(b)(3)?
- Where does venue properly lie for torts that occur and cause injury in outer space?
- What is the legal standard for liability under the CSLAA?

I.

B.

We begin by identifying the parties to the underlying lawsuit. The plaintiff-appellee, Han Solo, is a U.S. citizen and resident of Corellia, Chicago, Illinois. Solo is one of the wealthiest men in the world. He started "Solleu," which began as an online bookseller but later evolved into an international online marketplace that specializes in the speedy delivery of goods purchased online by Solleu members. Through his various companies, Solo eventually branched out into technology, original television programming, and private spaceflight.

Former defendant, Luke Skywalker, is a citizen and resident of Tatooine, Tunisia. Skywalker is generally regarded as one of the best space pilots on Earth. Solo sued Skywalker for negligence for failing to consider the effects of his attack against the DS-1 upon other satellites and spacecraft in the vicinity. Skywalker refused to testify in his deposition or at trial and instead invoked the Fifth Amendment in response to all questions.

Former defendant, Alianza Rebelde S.A., is a former Guatemalan company with its headquarters, dubbed "Yavin Four," in Tikal, Guatemala. Alianza Rebelde was sued for *respondeat superior* liability as Skywalker's alleged employer. Solo also sued Alianza Rebelde for civil conspiracy and for negligently entrusting its Incom T65B X-wing starfighter to Skywalker.

Skywalker and Alianza settled with Solo before trial. Neither Skywalker nor Alianza is a party to this appeal.

Solo also sued the Republic of Guatemala, because that was where Skywalker's space launch occurred. Solo generally alleged[1] that Skywalker acted as an employee

[1] Solo struggled to articulate a viable claim against the Republic of Guatemala, in part because of Guatemala's limited participation, if any, in the relevant international treaties. Those treaties, discussed more fully below, include the Outer Space Treaty, the Liability Convention, and the Registration Convention. Guatemala neither signed nor ratified the Outer Space Treaty or the Registration Convention. Guatemala signed, but did not ratify, the Liability Convention. *See*

or agent of the Guatemalan government, or alternatively, that Guatemala engaged in a conspiracy with Skywalker and Alianza Rebelde, S.A. The Republic of Guatemala asserted sovereign immunity against Solo's claims, but the district court denied Guatemala's motion to dismiss under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1602 *et seq*.[2]

Guatemala later moved for summary judgment, asserting the evidence did not raise any genuine dispute of material fact about Guatemala's liability to Solo, either as Skywalker's employer or as a co-conspirator with Skywalker and Alianza. The district court granted Guatemala's motion and dismissed Guatemala from the lawsuit. Solo has not challenged that ruling. Therefore, Guatemala is not a party to this appeal, either.

U.N. OFFICE FOR OUTER SPACE AFFAIRS, *Status of International Agreements Relating to Activities in Outer Space as at* [sic] *1 January 2024*, https://www.unoosa.org/res/oosadoc/data/documents/2024/aac_105c_22024crp/aac_105c_22024crp_3_0_html/AC105_C2_2024_CRP03E.pdf, at 6/10 (last visited May 1, 2024). Thus, although Skywalker's attack was launched from Guatemala, the Republic of Guatemala could not be held liable under any of those treaties, even if the treaties had given rise to a private cause of action.

[2] The FSIA generally confers sovereign immunity on foreign governments, *see* 28 U.S.C. § 1604, subject only to a few specifically enumerated exceptions. Solo cited the "noncommercial tort exception" to sovereign immunity. *See* 28 U.S.C. § 1605(a)(5). It is not altogether clear whether that exception would apply here inasmuch as it generally applies only to injuries or damages "occurring *in the United States*." *Id*. (emphasis added). In that way, the district court's exercise of subject-matter jurisdiction over Guatemala might have depended on the answer to the somewhat similar venue questions now presented by the Empire and the U.S.—that is, whether Solo's tort action asserting damages that occurred in outer space *above* the United States qualifies as an injury "occurring *in* the United States." *Id*. (emphasis added). Because Guatemala later obtained summary judgment and is not a party to this appeal, we need not decide that question here.

Defendant-appellant, Galactic Empire, Inc., is an American company headquartered in Mountain View, California. The Empire began in 1998 as "Galgal," the developer and provider of a revolutionary Internet search engine that used "web crawlers" or "spiders" to index Internet web pages. Galgal is the world's most used search engine, with a market share exceeding 85 percent of the world market.

In August 2007, a meteoroid struck northern California near Red Canyon Lake, not far from where one of Galgal's executives, Sheev Palpatine, was camping. At Palpatine's direction, Galgal spun off a subsidiary (Galactic Empire, Inc.),[3] which focused its attention on the subject of planetary defense. Those efforts intensified even further in 2012, after two different meteoroids—the Sutter's Mill meteoroid and the Novato meteoroid—struck northern California, somewhat close to Galgal's headquarters in the San Francisco/San Jose area.

In 2012, only days after the Sutter's Mill event, the Empire publicly announced its plans for the "Defense System One," or "DS-1." The DS-1 was designed by Empire employee Galen Walton Erso. Erso's design for the DS-1 contemplated a spherical space station, approximately 120 kilometers in diameter, that would orbit the Earth and would fire 8 tributary beams that would merge into a single "superlaser." The superlaser

[3] That name was selected to reflect the new entity's focus on space endeavors ("Galactic") and as a playful allusion to the fact that Galgal, because of its incredible success, was sometimes referred to in the industry as the "Galgal Empire." Galactic Empire also refers to itself as "the Empire," so we use that term, too.

could be fired at, and thereby destroy, approaching asteroids before they could enter Earth's atmosphere. The DS-1 would not use nuclear power in any way. Instead, its main power source was a "hypermatter" reactor that would generate the necessary propulsion to keep the DS-1 in orbit. Similarly, that same reactor would also power the superlaser by focusing hypermatter through a massive array of crystals.

The Empire began construction on the DS-1 in May 2012. Owing to its massive size, the DS-1 could not be built on Earth and then launched into space. Instead, the Empire launched supplies and construction materials into low Earth orbit, where robotic "spiders"—utilizing some of the same concepts as Galgal's web crawlers—would perform much of the construction work. The use of these robotic implements also would lessen the need for humans to work in dangerous space environments, and it would greatly accelerate the pace of construction. Thus, instead of the twenty-plus years it might take to build the DS-1 with human workers, the DS-1 was scheduled to be completed in only ten years.

At the time of its destruction, the DS-1 was orbiting the Earth at a distance of approximately 460 kilometers above the Earth's surface.[4] Following construction, the Empire's plan was to accelerate the DS-1 into a high-Earth orbit of 65,000 kilometers. That increased distance

[4] Originally, the Empire used a series of reusable rockets to provide the necessary propulsion to prevent orbital decay and to keep the DS-1 from re-entering Earth's atmosphere. But after the DS-1's hypermatter reactor was completed in 2016, the DS-1 was self-propelled.

was intended to allow the DS-1 to destroy or break up approaching objects sufficiently far from the Earth to prevent the resulting fragments from striking the Earth.

The Empire is the last remaining defendant from the original lawsuit and is one of the two appellants in this appeal.

C.

The United States is the other appellant. The United States is party to several relevant international treaties. Although those treaties are not self-executing and therefore cannot be privately enforced, *see Republic of Marshall Islands v. United States*, 865 F.3d 1187, 1192–93 (9th Cir. 2017), those treaties do inform our interpretation of the domestic statutes that effectuate the government's obligations and responsibilities under those treaties.

One of those treaties is the Convention on International Liability for Damage Caused by Space Objects, Mar. 29, 1972, 24 U.S.T. 2389, 1973 WL 151962, which is otherwise known as the "Liability Convention." The Liability Convention makes a "launching State" liable, under certain circumstances, for some damages caused by space objects launched into space by or from that State. *See id.*, arts. II-V. Another treaty—the Registration of Objects Launched into Outer Space, or "Registration Convention"—obligates a launching State to register any space object launched into Earth orbit or beyond. Jan. 14, 1975, art. I, 28 U.S.T. 695, 1976 WL 166855. The third treaty, known as the Outer Space

Treaty or "OST," recites several international agreements about the proper use of outer space. *See* Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, Jan. 27, 1967, 18 U.S.T. 2410, 1967 WL 90200; *see also Hughes Aircraft Co. v. United States*, 29 Fed. Cl. 197, 229 & n.40 (Fed. Cl. 1993) (discussing Outer Space Treaty and Registration Convention).

To effectuate the U.S.'s obligations under those treaties—and particularly the Liability Convention—Congress enacted a statutory scheme now known as the Commercial Space Launch Activities Act (CSLAA), found in Title 51, Chapter 509 of the U.S. Code. Under the CSLAA, any person or entity who plans to launch anything into outer space within the United States, or any U.S. citizen who plans to launch anything into outer space from any other location, must obtain a license from the U.S. government—specifically, the Secretary of Transportation—before doing so. *See* 51 U.S.C. §§ 50903(a), 50904(a).

Further, any such person or entity must obtain liability insurance or demonstrate financial responsibility in minimum amounts to compensate a third party for "death, bodily injury, or property damage or loss resulting from an activity carried out under the license[.]" 51 U.S.C. § 50914(a)(1). The maximum amount of liability insurance or financial responsibility for third-party claims need not exceed $500 million. *See id.* § 50914(a)(3)(A)(1); *see also* 14 C.F.R. § 440.9(c)(1).

Section 50915 appears to represent the U.S. government's efforts to comply with its payment and liability obligations under the Liability Convention. To that end, the United States shall pay a "successful claim" asserted by a third party against a licensee "for death, bodily injury, or property damage or loss resulting from an activity carried out under the license." 51 U.S.C. § 50915(a)(1). The government will not pay for any such damages that result from the licensee's willful misconduct. *See id*. § 50915(a)(2). Further, the government's payment obligations exist only to the extent the third party's claim exceeds the amount of liability insurance or financial responsibility required by section 50914 but does not exceed $1.5 billion (as adjusted for inflation occurring after January 1, 1989).[5] *See id*. § 50915(a)(1)(B). Finally, before any such Section-50915 payment may be made, the Government must be notified about the claim and given an opportunity to participate or assist in the defense of the claim. *See id*. § 50915(b).

Here, it is undisputed that the Empire fully complied with its obligations under Chapter 509. The Empire obtained licenses from the Secretary of Transportation for every space launch that carried supplies to the DS-1. The Empire also obtained the requisite liability insurance required by Section 50914(a)(3)(A)(1), in the maximum amount of $500 million against any third-party claim for death, bodily injury, or property damage.

[5] As of the date of this Opinion, that Section-50915(a)(1)(B) amount is approximately $3.77 billion.

Further, it is undisputed that both Solo and the Empire provided the requisite notice to the Government about Solo's claim for bodily injury and property damage. *See* 51 U.S.C. § 50915(b)(1); 14 C.F.R. § 440.19(e)(1). Although Solo did not sue the United States directly, the Government chose to intervene in the lawsuit to assist in the Empire's defense.[6] *See* 51 U.S.C. § 50915(b)(2); 14 C.F.R. § 440.19(e)(2); *see also* 28 U.S.C. § 517 (permitting governmental intervention to protect interests in suit pending in U.S. courts); FED. R. CIV. P. 24 (discussing federal government's intervention rights); *see also, e.g., Texas v. New Mexico*, 462 U.S. 554, 562 (1983) (intervention to protect U.S.'s interest in Pecos River).

D.

Before its destruction in May 2017, the DS-1 was under construction for five years and was approximately 50 percent complete. In that five-year interval, the Empire conducted hundreds of private space launches to transport supplies and materials to the construction site in low Earth orbit. Just in May 2017 alone, the Empire made six space launches of supplies to the DS-1.

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[6] Because the United States Government directly intervened and has acknowledged its obligation to pay for any valid Section-50915 damages, we need not decide whether Section 50915 of the CSLAA provides for a waiver of sovereign immunity. That question, of course, asks whether the CSLAA's statutory text unequivocally expresses a waiver of the United States's sovereign immunity. *See Lane v. Pena*, 518 U.S. 187, 192 (1996). We also need not decide whether Section 50915 authorizes a direct claim against the government—as opposed to mere notice and an opportunity to participate. *See* 51 U.S.C. § 50915(b)(1), (2). We can leave all these questions for another court and another day.

Most of those launches originated from California. Some launches occurred elsewhere in the United States, but none were launched from the State of Alderaan. No launches occurred outside the United States. Not surprisingly, then, the DS-1 and all components thereof are maintained on the United States's registry. *See* Registration Convention, 28 U.S.T. 695, art. II.

It is undisputed that the DS-1 contained a major design defect. If a specific thermal exhaust port—only two meters in diameter—sustained a direct hit from a proton torpedo, it would result in a chain reaction that would cause the station to explode. That fact was neither well-known nor widely publicized. The Empire did not discover the existence of the design defect until some eight to ten days before the DS-1 was attacked and destroyed. The Empire sought to keep that information private and to avoid its dissemination to those thought to have the means and desire to take advantage of the design flaw.

But Alianza Rebelde apparently learned about the design flaw. They dispatched their best pilot, Skywalker, because of his demonstrated ability to "bullseye" similarly sized targets in his homeland of Tatooine.

Their attack plan succeeded. On May 25, 2017, Skywalker launched his attack. He successfully struck the small thermal exhaust port with a proton torpedo. A few seconds later, the DS-1 exploded, sending shrapnel in all directions. Some of those fragments collided with Solo's starship, the *Millennium Falcon*.

The "Falcon," as Solo called it, cost a total of $18.2 billion to build. On the date of the collision, Solo had launched his ship from Mos Eisley spaceport near Djerba Island in Tunisia. Although Solo was a U.S. citizen and thereby bound to obtain a space-launch license from the United States government, *see* 51 U.S.C. § 50904(a)(2), Solo did not comply with that requirement, a transgression for which the U.S. fined him $100,000. *See* 51 U.S.C. § 50917(a), (c)(1).

E.

On May 21, 2019, Solo filed the underlying suit in the U.S. district court for the State of Alderaan, against Skywalker, Alianza Rebelde, Guatemala, and Galactic Empire, Inc. Solo claimed the collision caused him to sustain both bodily injuries and property damage. The latter included the complete destruction of the Falcon's navigational computer and, most significantly, severe damage to the Falcon's "Isu-Sim SSP05" hyperdrive.[7] Solo alleged the hyperdrive was rendered inoperative by the collision and that repairs would cost $4.5 billion.[8]

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[7] For those unfamiliar with spaceship components, the closest analog to a hyperdrive would be the Large Hadron Collider, which costs approximately $5 billion. *See* PAYLESS POWER, *The Cost of Powering the Millennium Falcon*, http://www.paylesspower.com/blog/the-cost-of-powering-the-millennium-falcon (Dec. 16, 2019) (last visited Jan. 28, 2023).

[8] That claim was hotly disputed at trial. The Empire contended that any damage to the hyperdrive predated the collision. The Empire presented several repair records indicating numerous previous attempts to repair the hyperdrive from the Hoth and Bespin repair shops located in Finse, Norway and Borehamwood, England, respectively.

The Empire timely filed a Rule 12(b)(3) motion, challenging venue in Alderaan as improper. *See* FED. R. CIV. P. 12(b)(3). No other defendant claimed venue was improper or filed a motion to that effect. The district court denied the Empire's venue motion. As discussed above, the Republic of Guatemala later successfully moved for summary judgment, and Solo settled with Skywalker and Alianza Rebelde before trial. Accordingly, the case proceeded to trial against the Empire, with the United States also participating at trial as intervenor.

The jury found that both the Empire and Skywalker were negligent, and it apportioned 50 percent of the responsibility for causing Solo's damages to each. The jury found Solo sustained $1 million in bodily injury damages and $4,499,000,000 in property damage, for a total of $4.5 billion. The State of Alderaan follows the "proportionate share" approach to the question of settlement credits. *See McDermott, Inc. v. AmClyde*, 511 U.S. 202, 209–10 (1994); *see also* RESTATEMENT (SECOND) OF TORTS § 886A cmt. m (1977). Thus, because the jury apportioned 50 percent of the responsibility to the Empire, the Empire's share of the actual damages found by the jury was $2.25 billion.

On May 25, 2022, the district court entered judgment for Solo, and against the Empire, on the jury's findings. The court awarded Solo prejudgment interest at the then-applicable prime rate (4 percent) for 5 years, that is, $450 million. The total judgment against the Empire was $2.7 billion.

After requesting briefing from the parties, the trial court determined that the CSLAA does not permit a direct action against the United States government. Accordingly, the court did not directly enter judgment against the United States. However, the judgment recites that the Government's "share" of damages, under 51 U.S.C. § 50915(a), was $2.2 billion—that is, the judgment damages exceeding the Empire's $500 million in liability insurance.[9]

F.

Jurisdiction is not at issue in this appeal. The trial court had jurisdiction over the underlying lawsuit under the CSLAA, which states, "Any claim by a third party . . . for death, bodily injury, or property damage or loss resulting from an activity carried out under the license shall be the exclusive jurisdiction of the Federal courts." 51 U.S.C. § 50914(g). The district court also had jurisdiction over the Republic of Guatemala, subject to its claim of sovereign immunity—which the trial court rejected under the FSIA—under 28 U.S.C. § 1330. Further, the district court found that it could have exercised diversity jurisdiction over Skywalker, Alianza,

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[9] Section 50915(a)(1)(B) ties the Government's payment to $1.5 billion plus the amount of inflation occurring after January 1, 1989. The trial court ultimately selected the date of judgment (May 25, 2022) for that calculation, concluding that $1.5 billion on January 1, 1989, was worth approximately $3.65 billion on the date of judgment.

But because the court was unsure as to the appropriate date to use for the end date on that inflation calculation, the court also calculated the values of $1.5 billion on the date of the occurrence (May 25, 2017; approximately $3.02 billion) and the date suit was filed (May 21, 2019; approximately $3.16 billion).

and the Empire under 28 U.S.C. § 1332. Finally, the district court stated in the final judgment that it had supplemental jurisdiction over all other claims related to the same case or controversy against the Empire. *See* 28 U.S.C. § 1367(a).

As the circuit court of appeals overseeing the State of Alderaan, we have jurisdiction over this appeal from a final judgment under 28 U.S.C. §§ 1291 and 1294(1). Further, we previously determined the U.S. Government has standing, under the case-or-controversy requirement of Article III, to appeal from the judgment.[10]

II.

We first address the Empire's venue challenge. The Empire was the only defendant who filed a Rule 12(b)(3) motion below, and only the Empire challenges venue on appeal. The trial court did not certify its venue ruling for immediate appeal. *See* 28 U.S.C. § 1292(b); *see also Lim*

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[10] In *Penda Corp. v. United States*, 44 F.3d 967 (Fed. Cir. 1994), the Federal Circuit determined a party who was not named in the judgment, and whose only obligation was to indemnify the judgment debtor, lacked standing to appeal. *See id*. at 970. But here, the Government does not seek to vindicate only the Empire's rights and does not have a mere "indirect" financial stake in the judgment. *Cf. Singleton v. Wulff*, 428 U.S. 106, 113–14 (1976); *Morrison-Knudsen Co. v. CHG Int'l, Inc.*, 811 F.2d 1209, 1214 (9th Cir. 1987). Instead, the Government has been personally aggrieved, independently from the Empire, because the judgment effectively obligates the Government to pay $2.2 billion *above* the $500 million owed by the Empire. Accordingly, the Government has shown an injury in fact from the judgment; that injury is "fairly traceable" to the trial court's actions; and that injury is likely to be redressed by the relief requested. *See Didrickson v. U.S. Dep't of Interior*, 982 F.2d 1332, 1337–38 (9th Cir. 1992); *accord Sierra Club v. Babbitt*, 995 F.2d 571, 574–75 (5th Cir. 1993). Further, the Government filed its own notice of appeal. *See Diamond v. Charles*, 476 U.S. 54, 62–64 (1986).

v. Offshore Specialty Fabricators, Inc., 404 F.3d 898, 901 (5th Cir. 2005). The Empire did not seek a writ of mandamus challenging that ruling. Thus, because the district court's interlocutory venue ruling was not subject to immediate appeal, *see La. Ice Cream Distribs., Inc. v. Carvel Corp.*, 821 F.2d 1031, 1033 (5th Cir. 1987), the Empire's venue complaint had to await the entry of final judgment. *See, e.g., BASF Plant Sci., LP v. Commonwealth Scientific & Indus. Research Organisation*, 28 F.4th 1247, 1258, 1260 (Fed. Cir. 2022).

The CSLAA provides for "exclusive jurisdiction" in the federal courts, but it says nothing about venue. 51 U.S.C. § 50914(g). Instead, Solo and the Empire both argue venue under the general venue statute. 28 U.S.C. § 1391.

Solo filed suit in the U.S. district court for the State of Alderaan. Solo's pleading alleged venue was proper in Alderaan under 28 U.S.C. § 1391(b)(2) because Alderaan was a "judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated." *Id.*; *see also* 28 U.S.C. § 1391(f)(1) (setting forth the same venue provision for civil actions against foreign states).

The Empire contends Alderaan is not a proper venue.

A.

To resolve this venue dispute, we must do a little unpacking. The Empire contends venue is not proper in Alderaan but would be proper in California. Notably, California just so happens to have enacted immunity and limited-liability statutes for certain injuries arising out of space-flight activities. *See* CA. CIVIL CODE § 2212. So have six other states. *See* COLO. REV. STAT. § 41-6-101; FLA. STAT. § 331.501; N.M. STAT. §§ 41-14-2 to -4; OKLA. STAT. tit. 3, § 352; TEX. CIV. PRAC. & REM. CODE §§ 100A.001–.003; VA. CODE §§ 8.01-227.8 to .10. It is not clear whether those California statutes would have applied here; such analysis is beyond the scope of this venue dispute. We also need not decide whether the CSLAA preempts any of these state laws. *See* 51 U.S.C. § 50919(c).

Alderaan has no such statutory provisions. To the contrary, the citizens of Alderaan staged several public demonstrations against the launching of the DS-1. In fact, a former Alderaanian princess[11] was the primary financial benefactor of Alianza Rebelde. Presumably because of those public sentiments, the Empire has never done any business in Alderaan. None of its employees are from Alderaan; it acquired no supplies from Alderaan; and it never even registered to do business there.

1.

Solo alleged venue in Alderaan was proper under 28 U.S.C. § 1391(b)(2). Specifically, Solo alleged:

[11] Alderaan was admitted as a new U.S. state in 2010. Alderaan is located in the Labrador Sea, between Newfoundland and Greenland. The existence of Alderaan was not even discovered by the rest of the world until 1977—further evidence that world cartographers did only a "pretty good job." *See Arrested Development: Pilot* (Fox television broadcast Nov. 2, 2003). Before its annexation, Alderaan was a kingdom ruled over by Queen Breha. Her husband, Bail Organa, became Alderaan's first U.S. senator.

> Venue is proper in the State of Alderaan because a substantial part of the events or omissions giving rise to Plaintiff's claim occurred in Alderaan. *See* 28 U.S.C. § 1391(b)(2). At the time of its destruction, the DS-1 was orbiting in low Earth orbit directly above Alderaan. Further, Defendant Skywalker entered the navigable airspace in low Earth orbit directly above Alderaan to attack the DS-1. The *Millennium Falcon*, piloted by Solo, was also traveling in low Earth orbit directly above Alderaan when it was struck by fragments that resulted from the explosion of the DS-1. Thus, Solo sustained both bodily injuries and property damage in low Earth orbit directly above Alderaan. Accordingly, a substantial part of the events giving rise to the claim occurred in Alderaan.

Solo's claim about proper venue *in* Alderaan thus stems from his allegations about conduct that occurred in low Earth orbit *directly above* Alderaan. That argument raises issues about statutory interpretation that we discuss below. But first, we address a *procedural* wrinkle that occurred in the district court because it potentially bears on the standards we apply to review this venue dispute.

2.

The district court conducted an evidentiary hearing on the Empire's Rule 12(b)(3) motion. During that hearing, Solo offered the expert testimony of Wedge Antilles, who supported Solo's claim that all the relevant events giving rise to his claim—that is, the position of the DS-1, Skywalker, and the *Millennium Falcon*—occurred in low Earth orbit directly above Alderaan. But the district court struck Antilles's opinions as unreliable under FRE 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).[12]

Solo also offered his own testimony that, at the time of the collision, his ship's navigational computer showed the *Millennium Falcon* was traveling in low Earth orbit directly above Alderaan. But data from the navigational computer suggested otherwise. The court excluded Solo's testimony about the computer data (as hearsay) and the computer data itself.[13]

Skywalker was called to testify about is actions at the venue hearing but refused to do so. The Empire presented no evidence on the question of venue. Thus, the district court's venue determination was not based upon

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[12] Specifically, the district court determined Antilles's opinions lacked a sufficient factual basis. Antilles reached his opinions by examining news reports about the locations on Earth where fragments from the exploded DS-1 were found. From those news reports, Antilles determined more fragments landed on Alderaan than on any other U.S. state. However, on cross-examination, Antilles confirmed he had not accounted for horizontal velocity, under which de-orbiting objects generally do not fall straight down but instead continue to follow a curved path around the Earth. The district court determined Antilles's conclusions lacked a sufficient factual basis. *See* FED. R. EVID. 702(b) (requiring that expert opinions be "based on sufficient facts or data").

[13] Solo suggested the computer data was probably faulty because the computer was damaged in the collision. The trial court concluded the data gave rise to equal inferences and thus was inconclusive—one inference showing Solo was orbiting above Ethiopia (if the computer was correct), but another inference suggesting the navigational data was erroneous because of collision damage. *See, e.g.*, *Ramsey v. United Mine Workers of Am.*, 481 F.2d 742, 746 (6th Cir. 1973).

competent evidence presented by either side at the hearing.

As to the *factual* issues, the district court determined the Empire bore the burden to produce evidence supporting its venue defense but failed to do so. As to the *legal* issue, the court concluded venue was proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claim occurred in Alderaan.

3.

We review the district court's venue ruling de novo. *See Mitrano v. Hawes*, 377 F.3d 402, 405 (4th Cir. 2004). Although the district court conducted an evidentiary hearing, no party presented competent evidence on the venue question, and the court made no factual findings. *Cf. Gulf Ins. Co. v. Glasbrenner*, 417 F.3d 353, 355 (2d Cir. 2005) (reviewing venue ruling de novo absent substantial disagreement about relevant venue facts). Our review of the district court's venue rulings therefore turns upon our interpretation of Rule 12(b)(3) and 28 U.S.C. § 1391. De novo review is appropriate for those two interpretation questions. *Merchant v. Corizon Health, Inc.*, 993 F.3d 733, 739 (9th Cir. 2021); *Call Henry, Inc. v. United States*, 855 F.3d 1348, 1354 (Fed. Cir. 2017).

B.

1.

"[T]he burden for establishing the propriety of venue is not uniform among the Circuits[.]" *In re ZTE (USA) Inc.*, 890 F.3d 1008, 1013 (Fed. Cir. 2018). The majority of circuits that have considered this question have placed the burden on the plaintiff when a defendant challenges venue as improper. Specifically, the First, Second, Fourth, Ninth, Eleventh, and Federal circuits place this burden on the plaintiff. *See ZTE*, 890 F.3d at 1013; *Gulf Ins. Co. v. Glasbrenner*, 417 F.3d 353, 355 (2d Cir. 2005); *Mitrano v. Hawes*, 377 F.3d 402, 405 (4th Cir. 2004); *Delong Equip. Co. v. Wash. Mills Abrasive Co.*, 840 F.2d 843, 845 (11th Cir. 1988); *Cordis Corp. v. Cardiac Pacemakers*, 599 F.2d 1085, 1086 (1st Cir. 1979); *Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979).

By contrast, the Third and Eighth Circuits place that burden on the defendant. *See Myers v. Am. Dental Ass'n*, 695 F.2d 716, 724 (3d Cir. 1982); *United States v. Orshek*, 164 F.2d 741, 742 (8th Cir. 1947); *Brigdon v. Slater*, 100 F. Supp. 2d 1162, 1164 (W.D. Mo. 2000) ("Although nationally there is a split of authority on the issue, in the Eighth Circuit, the defendant bears the burden of establishing improper venue.") (footnote omitted).

The Seventh Circuit has come down on both sides of this issue. *See Matter of Peachtree Lane Assocs., Ltd.*, 150 F.3d 788, 792 (7th Cir. 1998) ("[T]he party challenging venue bears the burden of establishing by a preponderance of the evidence that the case was incorrectly venued."); *but see Grantham v. Challenge-Cook Bros., Inc.*, 420 F.2d 1182, 1184 (7th Cir. 1969) ("Plaintiff has the burden of establishing proper venue."); *see also Niazi v. St. Jude Med. S.C., Inc.*, No. 17-cv-183-jdp, 2017 WL 5159784, at *2 (W.D. Wis. Nov. 7, 2017) ("[T]he Seventh Circuit has not resolved the tension between these two cases [*Grantham* and *Peachtree*] or even acknowledged the tension.”).

As of the date of the issuance of this opinion, the Fifth, Sixth, Tenth, and D.C. Circuits have not expressly addressed or decided this issue. *But see Reilly v. Meffe*, 6 F. Supp. 3d 760, 765 (S.D. Ohio 2014) (“There is a split of authority among district courts in the Sixth Circuit regarding who bears the burden of proof when venue is challenged as improper.”); *ZTE*, 890 F.3d at 1013 (also noting division between district courts within the Fifth Circuit).

2.

The district court agreed with the view taken by the Third and Eighth Circuits. So do we. We hold that when a defendant challenges a venue as improper, the defendant bears the burden to prove that defense.

We reach this conclusion because we believe the minority rule is better reasoned. The courts that have placed the venue burden on plaintiffs either “confuse jurisdiction with venue or offer no reasons to support their position.” *Myers*, 695 F.2d at 724. We thus agree with Professor Moore that the majority rule is “unsound.” *See id.* at 724–25 (citing 1 J. Moore, MOORE’S FEDERAL PRACTICE ¶ 0.140[1], at 1319–20 (2d ed. 1982)).

“Venue is not the identical (or even fraternal) twin of jurisdiction; rather it is an affirmative defense and a privilege held by defendants, which exists for the benefit of defendants.” *Simon v. Ward*, 80 F. Supp. 2d 464, 467 (E.D. Pa. 2000); *accord Myers*, 695 F.2d at 724 (“[A] motion to dismiss for improper venue is not an attack on jurisdiction but only an affirmative dilatory defense."). Even courts that follow the majority rule have noted that personal jurisdiction and venue, although related, are "nonetheless distinct." *Glasbrenner*, 417 F.3d at 357.

When a defendant's motion to dismiss raises questions, not about venue, but about a court's power to entertain the action (*i.e.*, jurisdiction), the plaintiff does—and should—bear the burden of proof on that issue. *See Myers*, 695 F.2d at 724 n.10. But unlike those defenses, improper venue is among the defenses that must be raised by the defendant and can be waived by a defendant. *See Simon*, 80 F. Supp. 2d at 467; *see also Myers*, 695 F.2d at 724 n.10 ("This is true with respect to motions to dismiss for forum non conveniens; failure to join an indispensable party; failure to exhaust remedies; and failure to state a claim.") (citations omitted).

"It logically follows therefore that on a motion for dismissal for improper venue under Rule 12 the movant has the burden of proving the affirmative defense asserted by it." *Myers*, 695 F.2d at 724. Therefore, there is no reason why a defendant "should not be required [to] make an evidentiary showing that venue is improper to reap the benefits of dismissal or transfer." *Simon*, 80 F. Supp. 2d at 467.

Thus, to the extent the Empire's venue challenge turns on the evidence (or lack thereof) presented at the hearing, that challenge fails because the Empire did not present any evidence demonstrating venue in Alderaan was improper.

C.

1.

The Empire contends venue is not proper in Alderaan, under 28 U.S.C. § 1391, because "a substantial part of the events or omissions giving rise to the claim" did not occur ***in*** the district of Alderaan. *See* 28 U.S.C. § 1391(b)(2). The Empire concedes venue could not be established under Section 1391(b)(1) because the defendants were not all residents of one state. *See id.* § 1391(b)(1). However, the Empire contends venue under subsection (b)(2) is proper only in California because the only actions that occurred ***in*** a judicial district occurred in California.

We must reject the Empire's venue contention. Although we acknowledge our venue rules are not well-equipped to address torts that occur within outer space, Congress chose to confer "exclusive jurisdiction" over this claim on the U.S. federal courts. 51 U.S.C. § 50914(g). But the implication of the Empire's argument is that, notwithstanding the congressional grant of *jurisdiction*, no *venue* can ever exist for torts that occur exclusively in outer space because such claims necessarily must be tethered to some conduct that occurs on terrestrial Earth. That argument would impermissibly create a venue gap as to CSLAA claims involving *only* outer-space conduct. We cannot interpret the CSLAA and Section 1391 to create such a venue gap:

> "Congress does not in general intend to create venue gaps, which take away with one hand what Congress has given by way of jurisdictional ground

> with the other. Thus, in construing venue statutes it is reasonable to prefer the construction that avoids having such a gap." In the present case, dismissal of the Antarctica claims for lack of venue creates a gap between jurisdiction and venue . . . .

Beattie v. United States, 756 F.2d 91, 104 (D.C. Cir. 1984) (quoting *Brunette Machine Works v. Kockum Indus.*, 406 U.S. 710 n.8 (1972)). Therefore, we reject the Empire's suggestion that venue can exist *only* in California.[14]

2.

Contrary to our dissenting colleague's suggestion, we need not definitively decide where venue might lie for every other incident that occurs in outer space. The question presented here asks whether "a substantial part of the events or omissions giving rise to" Solo's claim occurred in the judicial district of Alderaan. 28 U.S.C. § 1391(b)(2). We conclude they did.

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[14] In response to our dissenting colleague, venue under Section 1391 does not hinge on which U.S. district is *more* "reasonable." Op. at 71a. The plaintiff is given the first choice of venue, assuming that venue is proper. *See C.H. Robinson Worldwide, Inc. v. Tu*, No. 19-1444 (MJD/BRT), 2019 WL 7494686, at *4 (D. Minn. Dec. 20, 2019) ("The Court does not ask which district would be the *best* venue, rather, the question is whether the district the plaintiff chose had a substantial connection to the claim regardless of whether other forums had greater connections."). "[F]or venue to be proper, *significant* events or omissions *material* to the plaintiff's claim must have occurred in the district in question, even if other material events occurred elsewhere." *Glasbrenner*, 417 F.3d at 357. There may be other laws that permit venue transfers from "unreasonable" venues for the convenience of the parties. *See, e.g.*, 28 U.S.C. § 1404(a). But Section 1404 is not before us.

3.

We begin with what should be an obvious truism: States generally can exercise venue over crimes and torts that occur in their airspace. In the next section, we will explain why this principle should extend, with equal force, to torts committed in low Earth orbit above that State.

But first, it is undisputed that the United States claims exclusive sovereignty over its airspace. *See* 49 U.S.C. § 40103(a)(1). The term "United States" is specifically defined in that same chapter as including "the States of the United States, the District of Columbia, and the territories and possessions of the United States, including the territorial sea and the *overlying airspace*." 49 U.S.C. § 40102(a)(46) (emphasis added). And Title 49, Chapter 401 places no maximum-altitude limitation on the U.S.'s exercise of sovereignty over its airspace. Instead, "navigable airspace" means the "*airspace above the minimum altitudes of flight* prescribed by regulations under this subpart and subpart III of this part, including airspace needed to ensure safety in the takeoff and landing of aircraft." 49 U.S.C. § 40102(a)(32) (emphasis added). The statutes and associated regulations prescribe the *minimum* altitude but no *maximum* altitude. *See, e.g.*, 14 C.F.R. § 91.119 ("Minimum safe altitudes").

Much of the heavy lifting in this "overflight venue" area has been done by courts considering venue for crimes that occur on an airplane. We find those cases instructive. Although criminal actions involve different venue statutes than those used in civil cases, the principles that underlie both sets of statutes are similar. Thus, we need not consider whether Skywalker's attack on the DS-1 would be considered a point-in-time or a continuing crime under the criminal venue statutes, to conclude that venue in a tort action can be proper in a district if the tort occurred in the airspace "above" that district. It was true then—and remains true today—that "the navigable airspace above [a] district is a part of the district." *United States v. Barnard*, 490 F.2d 907, 911 (9th Cir. 1973).

We also find the original panel opinion in *United States v. Lozoya*, 920 F.3d 1231 (9th Cir. 2019), instructive. Lozoya was a passenger on a commercial flight from Minneapolis to Los Angeles. *See id.* at 1233. During the flight, Lozoya committed a single, instantaneous act of assault. *See id.* at 1233–34. Lozoya was tried in the district where the plane landed and convicted of the crime of simple assault. *See id.* at 1235–36. Following her conviction, Lozyoa appealed, arguing venue was not proper in the Central District of California. *See id.* The panel agreed with her. *Id.* at 1242.

The Ninth Circuit, sitting *en banc*, later overruled the panel opinion and held that the Constitution did not *limit* venue to the district directly below the airspace where the crime was committed. *Lozoya v. United States*, 982 F.3d 648, 652 (9th Cir. 2020). But that does not change our analysis here. Solo does not contend venue was *limited* to *only* the district directly below the airspace where the tort happened. Instead, Solo contends the district below the tort was a *permissible* venue. *Lozoya* does not suggest otherwise. *See id*. at 652 ("For crimes committed on planes in flight, the Constitution does not *limit* venue to the district below the airspace where the crime was committed.") (emphasis added).

And any such holding would have run afoul of the Supreme Court's opinion in *United States v. Rodriguez-Moreno*, in which the Court confirmed that, where a crime "was committed in all of the places that any part of it took place," venue for that crime "was appropriate in any of them." 526 U.S. 275, 282 (1999).

The Ninth Circuit reached the same conclusion in *Barnard*. "Venue may lie in any district in which the continuing conduct has occurred." 490 F.2d at 910. Thus, where a crime was committed on an airplane that flew over the Southern District of California, "as it progressed from Mexico to its landing in the Central District of California," venue was appropriate in <u>any</u> district over which the airplane traveled. *See id*. at 910–911. The court analogized to the same crime—transportation of marijuana—if transported across the Southern District and into the Central District by foot, horseback, wagon, bicycle, or car, and concluded "venue would lie in either district" for such crime. *See id*. at 911. The fact that the *Barnard* defendants instead used an airplane did not change the analysis:

> This situation arises from modern facilities for transportation and intercommunication in interstate transportation, and considerations of convenience and hardship, while they may appeal to the legislative branch of the government, will

> not prevent Congress from exercising its constitutional power in the management and control of interstate commerce.

Id. at 911 (quoting *Armour Packing Co. v. United States*, 209 U.S. 56, 77 (1908)). Thus, the "airplane overflight of a district may properly give rise to venue in that district with respect to the crimes charged here." *Barnard*, 490 F.2d at 910.

Thus, we return to the original panel opinion in *Lozoya*. The panel, relying on *Barnard*, reiterated that the assault occurred "within the jurisdiction of a particular district" notwithstanding its occurrence on an airplane flying over that district. *Lozoya*, 920 F.3d at 1241. Whether there might be *other* permissible venues, as the *en banc* court later held, does not change the fact that *one* of those permissible venues "is the district in whose airspace the alleged offense occurred." *Id*. at 1242.

4.

The next question, then, asks whether these principles cease to exist just because they happen in a spacecraft orbiting above that district, as opposed to the navigable airspace within that district. We see no reason why that should be the case.

"[T]he navigable airspace above [a] district is a part of the district." *Barnard*, 490 F.2d at 911. The only meaningful legal difference between "airspace" and "outer space" is one about *sovereignty*, but as discussed below, that question implicates jurisdiction, not venue.

And jurisdiction is specifically conferred by statute. 51 U.S.C. § 50914(g). Thus, we have no trouble concluding that a proper venue for this civil tort is the district below the place where that tort occurred. *See Lozoya*, 920 F.3d at 1241–42; *Barnard*, 490 F.2d at 911.

D.

We appreciate at least one court has analogized outer-space law to that pertaining to conduct in Antarctica. "The legal status of Antarctica has been most frequently analogized to outer space." *Beattie v. United States*, 756 F.2d 91, 99 (D.C. Cir. 1984). But Antarctica is not an apt comparison here, for two reasons. First, *Beattie* involves an altogether different question: whether Antarctica qualifies as a "foreign country" for the purposes of the Federal Tort Claims Act and sovereign immunity. *See id.* at 98–99. Whether outer space could be a "foreign country"—or not, *see Smith v. United States*, 507 U.S. 197, 201 (1993)—is irrelevant to Section 1391, which contains no such inquiry. Second, this tort happened over the airspace of a U.S. district, but Antarctica can *never* be a part of any U.S. district—so the analogy to Antarctica is of little use in discussing the overflight venue question.

We also appreciate Judge Walt's preference for a bright-line rule. But that is an issue for Congress, not us. We would note bright-line rules are not so easy to draw. There is much difference of opinion about where "airspace" ends and "space" begins, and even about where our atmosphere ends. *See* Gemmo Bautista Fernandez, *Where No War Has Gone Before: Outer Space and the*

Adequacy of the Current Law of Armed Conflict, 43 J. SPACE L. 245, 255–56 & nn.70-78 (2019) ("[T]here is no precise internationally agreed definition of the altitude(s) from the [terrestrial] surface at which outer space begins and airspace ends.") (citation omitted). Thus, although Walt suggests a "bright line" of 90 kilometers above the surface of the Earth because "a majority of nations" use that rule, another conventional definition of the edge of space is the Kármán line, which begins at an altitude of 100 kilometers above mean sea level. Eric Betz, *The Kármán Line: Where Space Begins*, ASTRONOMY, http://www.astronomy.com/https:/the-karman-line-where-does-space-begin/ (Nov. 27, 2023) (last visited Apr. 23, 2024).

Moreover, artificially drawing an altitude line, under which overflight venue exists and above which it does not, does not answer the issues presented here. The distinction between "airspace" and "space" may matter for *jurisdictional* purposes, to the extent outer space exists "beyond the sovereign claim, laws, or control of any one nation." James A. Beckman, *Citizens Without a Forum: The Lack of an Appropriate and Consistent Remedy for United States Citizens Injured or Killed as the Result of Activity Above the Territorial Air Space*, 22 B.C. INT'L & COMP. L. REV. 249, 253 (1999) (recognizing "a legal distinction between 'territorial air space' (under the control over the sovereign as part of its territory) and 'outer space' (not under the control of any sovereign and considered international territory)"). That distinction between sovereign and non-sovereign is an important one, but it deals with jurisdictional issues, not venue. *See id.* at 274–75 (proposing “creative interpretation” of “where the territorial air space ends and outer space begins” to address potential *jurisdictional* issues). Sovereignty questions aside, Congress conferred exclusive jurisdiction on the federal courts over these outer-space claims.

E.

We would join the *Lozoya* panel in asking Congress to address these venue issues “by establishing a just, sensible, and clearly articulated venue rule,” *Lozoya*, 920 F.3d at 1243, governing claims brought under the CSLAA. Until then, we are constrained to decide only the venue issue presented here—not fanciful hypothetical claims not before us.

It is enough, for our purposes, to note that Solo alleged that a substantial part of the events or omissions that gave rise to his claim occurred in the district of Alderaan. To the extent the Empire wished to dispute that claim, factually, it failed to carry its burden with evidence supporting its affirmative defense. And to the extent the Empire urges us to hold that overflight-venue principles should not apply to outer-space conduct, we are not willing to adopt any such black-and-white rule.

For these reasons, we overrule the Empire’s challenge to Alderaan as an improper venue.

III.

The Empire's second issue, and the United States's only issue, complains about the district court's denial of their renewed motions for judgment as a matter of law. *See* FED. R. CIV. P. 50(a), (b). Appellants do not challenge or dispute the jury's findings that the Empire negligently designed the DS-1 and that the DS-1 contained a design defect. Instead, Appellants' challenge is directed to the issue of *causation*.

Specifically, Appellants contend the applicable causation standard is that of proximate cause. Appellants further contend the actions of Luke Skywalker were unforeseeable and that Skywalker's conduct constituted an intervening, superseding cause that destroyed any causal connection between the Empire's negligence and Solo's damages.

Solo argued, and the court agreed, that the doctrine of "superseding cause" does not apply here because the applicable causation standard under the CSLAA is merely "but for" causation. Nevertheless, at Appellants' request, the court submitted a jury question on proximate cause (including foreseeability) and on intervening, superseding causes.[15] In response, the jury found the Empire's negligence proximately caused the occurrence.

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[15] The court submitted the proximate-cause question to obtain a finding and decrease the odds of a new trial should the judgment be reversed. Because the court applied the lesser standard of but-for causation, the court disregarded the jury's finding of proximate causation as immaterial to the outcome. *See, e.g.*, *Interex Corp. v. Atl. Mut. Ins. Co.*, 874 F. Supp. 1406, 1408 (D. Mass. 1995).

Nevertheless, Appellants contend the district court should have granted their renewed motion under FRCP 50 because, as a matter of law, the Empire's negligence did not proximately cause the explosion.

A.

1.

We review de novo the denial of Appellants' renewed motion for judgment as a matter of law. *See Kim v. Am. Honda Motor Co.*, 86 F.4th 150, 159 (5th Cir. 2023); *Granfield v. CSX Transp., Inc.*, 597 F.3d 474, 482 (1st Cir. 2010). To the extent the JMOL motion challenges the evidence supporting the jury's factual findings, we must view the evidence in the light most favorable to Solo, draw all factual inferences in his favor, and leave credibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts to the jury. *See Kim*, 86 F.4th at 159. Under that standard, a JMOL would be proper only if a reasonable jury would not have a legally sufficient evidentiary basis to find for Solo. *See id*.

However, we review de novo any questions of law raised by the JMOL motion. *See Salazar v. S. San Antonio Indep. Sch. Dist.*, 953 F.3d 273, 284 (5th Cir. 2017); *Tobin v. Liberty Mut. Ins. Co.*, 553 F.3d 121, 134 (1st Cir. 2009). That de novo review extends to our interpretation of statutes or regulations. *Teemac v. Henderson*, 298 F.3d 452, 456 (5th Cir. 2002).

2.

As discussed above, the district court exercised subject-matter jurisdiction pursuant to 51 U.S.C. § 50914(g). The district court applied federal law to procedural issues. However, the court generally applied the substantive law of the State of Alderaan, *see* 28 U.S.C. § 1652, with one notable exception: the court determined that, under the CSLAA, "but for" causation was the causation standard applicable to Solo's claim for bodily injury and property damage resulting from the Empire's activities under its space-launch licenses. In that regard, the district court applied a lower causation standard than the proximate-cause standard usually applied under Alderaanian state law to claims alleging negligent product design.

3.

We briefly discuss Alderaanian law about causation, including the distinction between "cause in fact," sometimes called "but for causation," and "legal" or "proximate cause." We note a firm definition for the term "proximate cause" "has escaped judges, lawyers, and legal scholars for centuries," *Kemper v. Deutsche Bank AG*, 911 F.3d 383, 392 (7th Cir. 2018), leading to varying formulations of "proximate cause" across different jurisdictions. *Colon v. Twitter, Inc.*, 14 F.4th 1213, 1223 (11th Cir. 2021). That said, Alderaanian state law is fairly typical on the questions of cause in fact, proximate causation, foreseeability, and intervening and superseding causes.

"Proximate cause" encompasses both "cause in fact" and "legal cause." *Hakim v. Safariland, LLC*, 79 F.4th 861, 872 (7th Cir. 2023); *Petersen v. Johnson*, 57 F.4th 225, 236 (5th Cir. 2023). Under "cause in fact" or "but for causation," a defendant's conduct is a cause in fact of an event if the event would not have occurred "but for" that conduct. *See Bostock v. Clayton Cty., Ga.*, 590 U.S. 644, 656 (2020); *United States v. George*, 949 F.3d 1181, 1187 (9th Cir. 2020) ("[A] but-for cause of a harm can be anything without which the harm would not have happened.")

For a negligent act or omission to constitute a but-for cause or a cause-in-fact, the act or omission also must have been a substantial factor in bringing about the harm. *See Petersen*, 57 F.4th at 236; *accord Hakim*, 79 F.4th at 872 ("substantial factor in bringing about the injury") (citation omitted); *see also Dooley v. United States*, 83 F.4th 156, 162 (2d Cir. 2023) (substantial cause of events producing injury); *Thacker v. Ethicon, Inc.*, 47 F.4th 451, 460 (6th Cir. 2022) ("substantial factor"); *McMunn v. Babcock & Wilcox Power Generation Grp., Inc.*, 869 F.3d 246, 269 (3d Cir. 2017) (same).

"Legal" or "proximate" cause, by contrast, requires additional proof of foreseeability. *See Hakim*, 79 F.4th at 872; *Petersen*, 57 F.4th at 236; *George*, 949 F.3d at 1187 ("Generally, proximate causation exists only when a harm was a foreseeable result of the wrongful act."). "It exists so long as the plaintiff's injury was a reasonably foreseeable result of the defendant's conduct." *Hakim*, 79 F.4th at 872.

As a corollary to the foreseeability analysis, in some cases a second act "breaks the chain of causation, relieving the originally negligent actor of liability." *Cottrell v. Am. Fam. Mut. Ins. Co., S.I.*, 930 F.3d 969, 972 (8th Cir. 2019). This concept is known as "superseding cause." *Hunter v. Mueske*, 73 F.4th 561, 568 (7th Cir. 2023). It provides as follows:

> When two or more individuals commit consecutive acts of negligence closely related in time, there is a question as to whether the initial act of negligence was the proximate cause or whether an efficient, intervening cause exists. The intervening act must so interrupt the chain of events that it becomes the responsible, direct, proximate and immediate cause of the injury. The legal effect of this type of superseding event severs the connection between the original actor's conduct and the plaintiff's injury as a matter of law. Intervening acts must be so separate that they are not foreseeable consequences of an original act of negligence.

Cottrell, 930 F.3d at 972 (cleaned up); *see Hunter*, 73 F.4th at 568 ("[W]hen the plaintiff's injury is caused not by a risk created by the defendant but by an unforeseeable intervening act, that act will operate to sever the defendant's liability."). Generally, an intervening act does not relieve an earlier actor of liability if the intervening cause was reasonably foreseeable. *See Jensen v. EXC, Inc.*, 82 F.4th 835, 858 (9th Cir. 2023).

Instead, an intervening cause becomes a "superseding cause," and thereby breaks the causal chain between the original actor's negligence and the plaintiff's injuries, "only when its operation was both foreseeable and when with the benefit of 'hindsight' it may be described as abnormal or extraordinary.'" *Jensen*, 82 F.4th at 858 (citation omitted). To determine whether a second cause constitutes an intervening and superseding cause, Alderaan, like many other states, follows Sections 442 to 453 of the Restatement (Second) of Torts.

4.

Pursuant to the district court's determination that the CSLAA requires proof only of but-for causation, the jury was first asked (in relevant part):

> Do you find, by a preponderance of the evidence, that the negligence, if any, of Galactic Empire, Inc. in designing the DS-1 was a cause in fact of the explosion?
>
> . . .
>
> For a negligent act or omission to have been a cause in fact of the explosion, the act or omission must have been a substantial factor in bringing about the explosion, and absent the act or omission, the explosion would not have occurred.

The jury answered that question "Yes."

Further, and at Appellants' request, the jury was also asked whether the Empire's negligent design of the DS-1 *proximately caused* the explosion. "Proximate cause" and "intervening and superseding cause" were defined thusly:

> A "proximate cause" is a cause, unbroken by any intervening and superseding cause, that was a substantial factor in bringing about an occurrence, and without which cause such occurrence would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the occurrence, or some similar occurrence, might reasonably result therefrom.
>
> An "intervening and superseding cause" is the act or omission of a separate and independent agent, not reasonably foreseeable, that destroys the causal connection, if any, between the original actor's negligence and the occurrence in question.

Immediately following those definitions, the district court further instructed the jury by directly quoting the language from Restatement Sections 442 and 448. The jury answered that question "Yes," too.

The district court disregarded, as immaterial, the jury's affirmative answer to the proximate-cause question and instead entered judgment on the jury's finding of negligence under the but-for causation standard.

B.

1.

We first address the Appellants' argument, echoed by our dissenting colleague, that the CSLAA should not apply because the explosion, and Solo's resultant damages, did not specifically occur *during* a space launch or reentry event.

Section 50915 of the CSLAA states:

> [T]he Secretary of Transportation shall provide for the payment by the United States Government of a successful claim (including reasonable litigation or settlement expenses) of a third party against a [licensee] resulting from an *activity carried out under the license issued* . . . for death, bodily injury, or property damage or loss *resulting from an activity carried out under the license*.

51 U.S.C. § 50915(a) (emphases added). Thus, Section 50915(a) is not so limited as Appellants claim. Congress *could have* used the term "launch or reentry" but instead broadly provided for payment for injuries resulting from any *activity* carried out under the license. *See id.*

Congress used that same broad term in Section 50914, which relates to the scope and amount of insurance a licensee must carry. *See id.* § 50914(a)(1) (requiring liability insurance in sufficient amounts to compensate for loss "resulting from an activity carried out under the license"). We assume Congress meant for the CSLAA to have broad application.

2.

Our conclusion that the CSLAA covers this event and Solo's injuries is also supported by the United States's treaty obligations. We recognize—and agree—that the relevant treaties (the Outer Space Treaty, the Liability Convention, and the Registration Convention) are not self-executing and therefore cannot form the basis for a private right of action. *See Republic of Marshall Islands v. United States*, 865 F.3d 1187, 1192–93 (9th Cir. 2017); *Wojt v. Trump*, No. 23-cv-12454, 2023 WL 6627966, at *4 (E.D. Mich. Oct. 11, 2023); *Nemitz v. United States*, No. CV-N030599-HDM (RAM), 2004 WL 3167042, at *2 (D. Nev. Apr. 26, 2004); *see also Medellín v. Texas*, 552 U.S. 491, 508 (2008) (discussing judicial determinations about self-executing nature of treaties). Nothing in any of these three treaties appears to relate to enforcement actions by private citizens; instead, they "call upon governments to take action [in relation to] the conduct of our foreign relations, an area traditionally left to executive discretion." *See Diggs v. Richardson*, 555 F.2d 848, 851 (D.C. Cir. 1976).

We recognize some disagreement whether statutes should be interpreted according to non-self-executing treaties relating to the same subject. *See Saleh v. Bush*, 848 F.3d 880, 891 n.9 (9th Cir. 2017); *Bennett v. Islamic Republic of Iran*, 618 F.3d 19, 23–24 (D.C. Cir. 2010) (confirming a "fundamental canon of statutory interpretation" is that a "treaty will not be deemed to have been abrogated or modified by a later statute unless such purpose on the part of Congress has been clearly expressed") (citation omitted); *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1114 (9th Cir. 2001) ("[W]e generally construe Congressional legislation to avoid violating international law.") (citation omitted); Rebecca Crootof, *Judicious Influence: Non-Self-Executing Treaties and the Charming Betsy Canon*, 120 YALE L.J. 1784, 1789–90, 1801 (2011) (arguing "ambiguous statutes may be construed in light of all non-self-executing treaties" and "courts may use the Charming Betsy canon to interpret [an ambiguous] statute to avoid violating treaty commitments"); *but see Fund for Animals, Inc. v. Kempthorne*, 472 F.3d 872, 879–80 (D.C. Cir. 2006) (Kavanaugh, J., concurring) (arguing the principle against construction of an ambiguous statute to abrogate treaties "should not apply in cases involving non-self-executing treaties").

But, as the Ninth Circuit wrote:

> The issue in any legal action concerning a statute implementing a treaty is the intended meaning of the terms of the statute. The treaty has no independent significance in resolving such issues, but is relevant insofar as it may aid in the proper construction of the statute.

Hopson v. Kreps, 622 F.2d 1375, 1380 (9th Cir. 1980). We also think it pertinent that Congress expressly instructed that the CSLAA be carried out consistent with the United States's treaty obligations. 51 U.S.C. § 50919(e). Thus, we think it proper to interpret the CSLAA in light of the relevant treaties.

Commentators consistently agree that the CSLAA was enacted so the United States could comply with its treaty obligations under the Outer Space Treaty, Liability Convention, and Registration Convention.[16] And the Liability Convention does not limit the U.S. Government's payment obligations only to injuries that occur solely during launch and reentry activities. *See* Liability Convention, 24 U.S.T. 2389, arts. II-III. Instead, the purpose of both the Liability Convention and the Registration Convention is to make the U.S., as the launching nation, responsible for damages caused—at any point in the process—by objects it launches into space. Further, the Outer Space Treaty specifically provides that "[t]he activities of non-governmental entities in outer space . . . shall require . . . *continuing supervision* by the appropriate State Party to the Treaty." Outer Space Treaty, 18 U.S.T. 2410, art. VI (emphasis added).

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[16] *See, e.g.,* Manal Cheema, *Ubers of Space: United States Liability over Unauthorized Satellites*, 44 J. SPACE L. 171, 204 (2020) ("For the US, the . . . [CSLAA] serves as the primary body of national law governing commercial launch activities and related international obligations of the US."); *see id.* at 173 (discussing the FCC's Enforcement Advisory that "affirmed that licensing is a critical aspect of ensuring the US' satisfaction of its international treaty obligations, particularly the [Outer Space Treaty]"); Thomas J. Herron, *Deep Space Thinking: What Elon Musk's Idea to Nuke Mars Teaches Us about Regulating the "Visionaries and Daredevils" of Outer Space*, 41 COLUM. J. ENVTL. L. 553, 587 n.225 (2016) (confirming CSLAA's promise of governmental payment "makes sense not only to assuage investor fears of unlimited liability but to satisfy treaty obligations under the Liability Convention").

Thus, properly read, the CSLAA does not limit payment under Section 50915 solely to injuries that occur during the launch and reentry processes. Instead, the U.S., commensurate with its international treaty obligations, remains liable under and through Section 50915 for damages caused, at any time, by the objects it launches into space (subject, of course, to proof of fault).

C.

1.

We hold the appropriate causation standard for claims covered by the CSLAA—that is, claims by a third party against a licensee (and by extension, the U.S. Government) for death, bodily injury, or property damage or loss resulting from an activity carried out under a CSLAA license—is not proximate cause, but instead mere but-for cause or cause-in-fact.

Admittedly, the CSLAA is no model of legislative clarity.[17] However, both Section 50915 and the regulations enacted under it specifically use the term "resulting from." *See* 51 U.S.C. § 50915; 14 C.F.R. § 440.3 ("Liability means a legal obligation to pay a claim for bodily injury or property damage resulting from a licensed or permitted activity.").

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[17] Moreover, there has only been one claim ever filed under the Liability Convention. But, although we consult the Liability Convention for guidance in interpreting the CSLAA, that previous claim provides no legal precedent to guide our analysis because it was settled before any kind of judicial resolution. *See* Mousa Martin, *Shepherding Space: How Participation in an Open Architecture Data Repository Informs Spacefaring Liability*, 12 GEORGE MASON INT'L L.J. 115, 115 & n.4 (2021).

It is well-settled that the statutory phrase "resulting from," as used in Section 50915, means only but-for causation. *See Spicer v. McDonough*, 61 F.4th 1360, 1364 (Fed. Cir. 2023); *accord Burrage v. United States*, 571 U.S. 204, 210–11 (2014) (treating statutory phrase "results from" as connoting mere but-for causation). "This phrase ['resulting from'] has no qualifiers or exceptions. No textual or contextual indication dictates a narrower interpretation of 'resulting from' than but-for causality.").

"[B]ut-for causation is broad, undisputedly broader than proximate cause." *Spicer*, 61 F.4th at 1364; *accord Burrage*, 571 U.S. at 212 ("Where there is no textual or contextual indication to the contrary, courts regularly read phrases like 'results from' to require but-for causality."). The same result should follow here. In drafting Section 50915, "Congress specifically invoked but-for causation and did not indicate that it meant anything else." *Spicer*, 61 F.4th at 1364.

Thus, we need not decide whether Skywalker's actions were foreseeable or whether they constituted an intervening and superseding cause. The doctrines of intervening and superseding cause are limited to cases involving proximate cause, not mere cause in fact. *See Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 836 (1996) (describing doctrine of "superseding cause" as related to "proximate causation"); *In re RFC & RESCAP Liquidating Trust Action*, 332 F. Supp. 3d 1101, 1170–71 (D. Minn. 2018) (rejecting defendant's defenses of superseding and intervening cause as irrelevant because causation standard was not proximate cause).

2.

But-for causation is "established whenever a particular outcome would not have happened 'but for' the purported cause." *Bostock v. Clayton Cty., Ga.*, 590 U.S. 644, 656 (2020). Here, the evidence amply supports the jury's finding of but-for causation.

The DS-1 was a technological marvel, with many state-of-the-art safety features. Because the Empire deemed the primary risk to be orbital decay and reentry into Earth's atmosphere. the DS-1 featured redundancies that, in the event of damage to the primary propulsion device, would kick in to keep the DS-1 in orbit until such time as repairs could be made. The DS-1's hypermatter reactor, which could readily divert additional power to those propulsion systems if needed, was well protected. And the DS-1's hull was constructed with "Quadanium" steel, a highly durable, damage-resistant material.

Nevertheless, the DS-1 was not supposed to be susceptible to destruction by a one-man starfighter. But it was. If a specific thermal exhaust port sustained a direct hit from a proton torpedo, it would result in a chain reaction that would cause the station to explode. And that is precisely what happened.

The explosion of the DS-1 resulted in high-velocity shrapnel and fragments distributed in every direction. Some of those fragments struck and damaged the *Millennium Falcon* and caused injury to Solo.

Therefore, we have no difficulty in concluding the Empire's negligent design of the DS-1 was a but-for cause of the explosion and Solo's claimed damages.

D.

In response to our concurring and dissenting colleagues, our interpretation of the CSLAA as requiring proof of mere but-for causation does not render meaningless the requirement that a plaintiff prove a "successful claim," 51 U.S.C. § 50915(a)(1), whatever that term means.

Again, the CSLAA leaves many questions unanswered. Accordingly, and as discussed above, we must seek additional guidance from the three treaties that resulted in this domestic statutory scheme that was intended to effectuate the U.S's obligations under those treaties.

We agree that Section 50915's requirement of a "successful claim" must be given meaning. But what is a "successful claim" under the CSLAA? Our concurring and dissenting colleagues assume that language necessarily incorporates state-law concepts of negligence and *proximate cause*. But those conclusions apparently stem solely from law-review articles in which those authors simply *assumed* courts would apply negligence and proximate-causation principles. There is nothing substantive underlying those assumptions.

The Liability Convention that gave rise to the CSLAA says nothing about negligence or proximate cause. It *does* distinguish damage caused on the surface of the Earth from damage caused solely within outer space. 24 U.S.T. 2389, arts. II, III. Nations are strictly liable for damage caused on the surface of the Earth. *Id.* art. II. That provision does not apply to Solo's claims.

As to damage "caused elsewhere than on the surface of the earth to a space object . . . or to persons or property on board such a space object," the launching state "shall be liable only if the damage is due to its *fault* or the *fault* of persons for whom it is responsible." *Id.* art. III (emphases added).

The ambiguous term "fault," as used in Article III, is nowhere defined in the Liability Convention. Evidently, the subscribing nations *insisted upon* the use of the vague word "fault" instead of identifying any specific legal standard for liability. "From the outset, the United States and the Eastern Bloc countries had strikingly different views of the legal regime which should govern activities in outer space." Marc S. Firestone, *Problems in the Resolution of Disputes Concerning Damage Caused in Outer Space*, 59 TUL. L. REV. 747, 753 (1985).[18] Accordingly, the Liability Convention never established a specific standard of care for space conduct, apart from "fault." Martin, 12 GEORGE MASON INT'L L.J. at 131. Interestingly, we would note that the U.S. itself advocated for a system of liability without proof of fault, that is, without requiring proof "that a particular injury was caused by fault or negligence." Firestone, 59 TUL. L. REV. at 753.

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[18] The history of the negotiations that resulted in the Liability Convention are laid out in the "travaux préparatoires," which are available from UNOOSA. https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/travaux-preparatoires/liability-convention.html. Those negotiations are also well summarized in Mr. Firestone's excellent law-review article. *See* Firestone, 59 TUL. L. REV. at 753–58.

So what, then, is a "successful claim" for Section-50915 purposes? Mr. Firestone suggested that, in countries that follow the common law, "fault-based liability does not exist in the absence of some breach of duty on the part of the defendant." Firestone, 59 TUL. L. REV. at 768. We agree. But that conclusion is not inconsistent with our holding here: that the CSLAA requires proof of negligence by the licensee but imposes liability only on a lesser, but-for causation standard.[19]

Further, our holding is entirely consistent with the U.S.'s obligations under all three treaties. Read together, all three confirm the subscribing nations' agreement to be responsible for damage caused by their outer-space activities without being bogged down in procedural niceties about foreseeability or intervening-and-superseding causes.

Specifically, those treaties provide that:

1. State Parties "shall bear international responsibility for national activities in outer space . . . whether such activities are carried on by governmental agencies or by non-governmental entities . . . ." Outer Space Treaty, 18 U.S.T. 2410, art. VI.
2. State Parties that directly or indirectly launch objects into outer space are "internationally liable for damage" caused by such object. *Id.* art. VII.

[19] To the extent that lesser causation standard may be inconsistent with state law requiring proof of proximate causation, the CSLAA may preempt any such inconsistent state laws. *See* 51 U.S.C. § 50919(c)(1).

3. State Parties who launch objects into outer space "shall retain jurisdiction and control over such object . . . while in outer space[.]" *Id.* art. VIII.
4. The stated purpose of the Liability Convention was to "ensure, in particular, the prompt payment . . . of a full and equitable measure of compensation to victims of such damage." Liability Convention, 24 U.S.T. 2389, Preamble.

To effectuate these purposes, *see* 51 U.S.C. § 50919(e)(1), we think it entirely reasonable that Congress intended to require proof of negligence[20] *but* to impose a lesser causation standard.

IV.

The district court correctly denied Appellants' renewed motion for judgment as a matter of law. Accordingly, we overrule the Empire's second issue and the United States's sole issue.

Having done so, we affirm the Judgment.

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[20] In fact, the CSLAA contemplates a "successful claim" might be established even short of a full trial. Section 50915(a)(1) uses the term "successful term" as "including reasonable litigation *or settlement* expenses. 51 U.S.C. § 50915(a)(2) (emphasis added). We need not decide the complete scope of the term "successful claim" to determine that Solo's proof of negligence and but-for causation constitutes a "successful claim" under the CSLAA.

WINDU, Circuit Judge, with whom YODA, Chief Judge, joins, concurring.

I join the Court's opinion except for Parts III.B.2, III.C. and III.D. I fully agree with the Court's resolution of the Empire's venue challenge and the Court's reasoning for its venue holding. On that subject, I write separately only to note additional grounds supporting the Court's venue holding.

But I disagree with the Court's interpretation of 51 U.S.C. § 50915 as requiring only proof of but-for causation to establish liability under the CSLAA. The statute, considered as a whole, demonstrates Congress did not intend to excuse third-party claimants from having to prove foreseeability and proximate causation. That said, the evidence adequately supports both foreseeability and proximate cause; therefore, I agree the district court did not err by denying the Empire's and the United States's motion for judgment as a matter of law.

I.

For those who may be late to the game—including this Court—it may seem tempting to frame the venue analysis in the Empire's terms. Perhaps the *Empire's* acts and omissions occurred only in California, or perhaps not. But its actions cannot be considered in a vacuum because there were several other defendants in the lawsuit when the district court was presented with the Empire's venue challenge. And their presence further helps to explain the district court's venue ruling.

As the Supreme Court explained in *Leroy v. Great Western United Corp.*, venue becomes a trickier issue in cases involving multiple defendants who reside in different districts. 443 U.S. 173, 184 n.17 (1979). Before the amendments to Section 1391, a "venue gap" often existed "in situations in which joint tortfeasors, or other multiple defendants who contributed to a single injurious act, could not be sued jointly because they resided in different districts." *Id*. That venue gap is what prompted Congress to amend Section 1391 to provide for venue where claims arise. *See id.*

Even so, multiparty cases continue to pose venue issues: "Given the judicial system's great concern with the efficient conduct of complex litigation, an important consideration in deciding appropriate venue is whether a forum can meet the personal jurisdiction and venue requirements for most or all of the defendants in a multi-party lawsuit." *Delong Equip. Co. v. Wash. Mills Abrasive Co.*, 840 F.2d 843, 857 (11th Cir. 1988).

This lawsuit was as much about the actions of Luke Skywalker, a Tunisian citizen with few contacts in the United States, as it was about the Empire. It was also about Alianza Rebelde S.A. and the Republic of Guatemala. The one common venue thread for all these defendants was the availability of venue in any "judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." *See* 28 U.S.C. § 1391(b)(2), (f)(1). The Empire does not explain how or why California would be a proper venue for Solo's claims against those defendants.

Thus, were we to rule that California was the only proper venue—as the Empire urges us to do—we would run into the same problems discussed by the Eleventh Circuit in *Delong*: "If we were to rule, for example, that venue properly should be in [California] because of [the Empire's] connections there, we most likely would preclude [Solo] from carrying on [his] suit against [Skywalker, Alianza, and Guatemala], who have little, if any, contact with [California]." *Delong*, 840 F.2d at 857. Thus, Solo's selection of the District of Alderaan as a proper venue for his suit "must be viewed with the residency of all the defendants in mind, not merely that of" the Empire. *Id.*

The subsection (b)(1) venue provision does not apply because the defendants were not all residents of one State. 28 U.S.C. § 1391(b)(1). Further, the Empire has not advanced any compelling argument that the other defendants have any connection to California. And so, if Alderaan cannot be a proper venue under subsection (b)(2), then there is no State that satisfies that requirement. Thus, we are left with subsection (b)(3), which states, "A civil action may be brought in . . . if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action." 28 U.S.C. § 1391(b)(3).

Venue under Section 1391(b)(3) puts this case *back in Alderaan*. That is because Skywalker should be subject to personal jurisdiction in Alderaan because he intentionally entered the U.S.'s airspace above Alderaan. *See Olsen by Sheldon v. Gov't of Mexico*, 729 F.2d 641, 649 (9th Cir. 1984) (finding exercise of jurisdiction in California proper where aircraft pilot twice intentionally entered California airspace), *abrogated on other grounds by Joseph v. Office of Consulate Gen. of Nig.*, 830 F.2d 1018, 1026 (9th Cir. 1987); *see also Gonzales v. Seadrill Americas, Inc.*, No. 3:12-CV-00308, 2014 WL 2932241, at *6 (S.D. Tex. June 27, 2014) ("Specific jurisdiction would undoubtedly exist in Texas if the alleged injuries took place during one of the rare instances in which a Pegaso Mexico aircraft is in Texas airspace."); *cf. LeGrande v. United States*, 687 F.3d 800, 808 (7th Cir. 2012) (applying Ohio law to govern claims arising from injuries that occurred while airplane was flying in Ohio airspace).

Thus, it makes no difference here whether we agree with the Empire that overflight venue does not extend to torts committed in outer space. Because Skywalker would have been subject to personal jurisdiction in Alderaan, Alderaan still would be a proper venue under Section 1391(b)(3).

II.

I do not agree with the majority's interpretation of Section 50915 as requiring proof of mere but-for causation. The term "resulting from," as used in Section 50915, cannot be divorced from the remainder of that section, which also requires proof of a "successful claim." Nothing in the CSLAA suggests Congress intended to preempt the usual requirements for a "successful claim" under American tort law, which requires proof of negligence and proximate cause.

The key language from *Burrage* is not the second part of the sentence—emphasized by the majority—but instead, the first part of the sentence. "*Where there is no textual or contextual indication to the contrary*, courts regularly read phrases like 'results from' to require but-for causality." *Burrage v. United States*, 571 U.S. 204, 212 (2014) (emphasis added). Here, Congress provided that contrary textual indication through its inclusion of the requirement of a "successful claim." *See id*.

Properly interpreted, Section 50915 appears to set forth an indemnity scheme, under which the United States agrees to indemnify its space-launch licensees for certain damages those licensees must pay as a result of "successful claims" by third parties. Under that approach, a "successful claim" refers *not* to the indemnity claim against the Government but instead to the underlying claim by the third party against the licensee. And that underlying claim would be governed by usual and customary state substantive laws, including the necessity of proof of negligence by the licensee and proof that such negligence proximately caused the third party's damages. Considered in that light, the "resulting from" language can and should be properly interpreted as overlaying an additional evidentiary requirement to trigger the U.S.'s indemnity obligation. The CSLAA sets up this procedure:

1. A third party must succeed on an ordinary tort claim against the non-governmental actor, including proof of negligence, proximate cause, and damages.
2. ***If*** that successful claim "result[s] from" the licensee's activities carried out under a Chapter-509 license, the Government must then indemnify the licensee for covered damages awarded against the tortfeasor in the underlying "successful claim."
3. ***But if*** the Government determines the third party's claim resulted from the licensee's "willful misconduct," the Government may deny indemnity.

This interpretation of Section 50915 as an indemnity scheme fully gives effect to all parts of Section 50915. This also is the same conclusion reached by numerous commentators who have opined the CSLAA incorporates a traditional negligence (and proximate-cause) showing under state substantive laws.[1]

[1] "By agreeing to the creation of the second tier of repayment [in the CSLAA] . . . '[t]he United States has . . . committed itself to pay for negligence claims to which it was not even a party.'" Michael Tse, "*One Giant Leap [Backwards] for Mankind": Limited Liability in Private Commercial Spaceflight*, 79 BROOK. L. REV. 291, 312 & n.198 (2013) (citation omitted); *see also* Paul B. Larsen, *Commercial Operator Liability in the New Space Era*, 113 AJIL UNBOUND 109, 110 (2019) ("[A] domestic commercial satellite operator can be held liable for failure to maintain a reasonable standard of care if there are foreseeable injuries and damages and the claimant can prove fault ***and proximate cause***.") (emphasis added).

Thus, the district court's disregarding of the jury's proximate-cause finding was <u>not</u> immaterial. Indeed, the only immaterial finding was the but-for finding.

III.

Nevertheless, I concur in the Court's judgment. Even if considered under a proximate-causation analysis, the evidence amply supports the jury's proximate-cause finding. A reasonable jury could, and did, find the Empire's actions were a proximate cause of the explosion, that Luke Skywalker's actions were foreseeable, and that his conduct did not constitute an intervening and superseding cause of the explosion.

A.

The DS-1 was highly controversial upon its announcement, throughout its development, and during the entire 5-year period of its construction. Opponents called it the "Death Star" and staged worldwide protests against it (and against the Empire and the U.S.).

Nations across the globe decried the "Death Star" as a "weapon of mass destruction" specifically barred by the Outer Space Treaty: "State Parties to the Treaty undertake not to place in orbit around the Earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction . . . ."[2] Outer Space Treaty, 18 U.S.T. 2410, 1967 WL 90200, art. IV.

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[2] Those concerns may have been justified. Although the Outer Space Treaty does not define the term, the U.N. has defined that term as broadly including

The Death Star[3] was also opposed by environmental groups. Although it was roughly 1/25th the size of the Moon upon completion, environmental groups feared an object of that size could potentially cause tidal effects on Earth. Further, protestors expressed concerns that the Death Star could ironically *increase* the risk of meteoroid strikes by breaking up approaching objects into many more pieces. And of course, there were concerns that, if the Death Star were to itself de-orbit, its impact could cause massive destruction on the Earth.

Moreover, the Death Star was launched at a time, and in an environment, in which the U.S.'s repeated protestations about "peaceful" intentions were viewed skeptically by other nations. Although the U.S. officially declared it was not interested in "blowing up planets," *see* Op. at 68a, the U.S. had just withdrawn from the Anti-Ballistic Missile Treaty only a few years earlier. *See* Jackson Nyamuya Maogoto & Steven Freeland, *Space*

"all major weapons adaptable to mass destruction." Clayton J. Schmitt, Note, *The Future is Today: Preparing the Legal Ground for the United States Space Force*, 74 U. MIAMI L. REV. 563, 577 (2020) (citation omitted); *see also* Thomas J. Herron, *Deep Space Thinking: What Elon Musk's Idea to Nuke Mars Teaches Us about Regulating the "Visionaries and Daredevils" of Outer Space*, 41 COLUM. J. ENVTL. L. 553, 563–64 (2016) ("Its plain meaning is 'a weapon that is intended to kill human beings, without discriminating between combatants and noncombatants, on a massive scale.") (citation omitted). "[A]ny device with high destructive potential against humans is likely to be classified as a weapon of mass destruction." Herron, 41 COLUM. J. ENVTL. L. at 564.

[3] I use this term because, although the "DS-1" designation officially stood for "Defense System One," what matters, for the purposes of this foreseeability analysis, is what its numerous critics around the world called it. The common use of the term "Death Star" should have put the Empire and the U.S. on notice that it was likely to be targeted by those with the means to do so.

Weaponization and the United Nations Charter Regime on Force: a Thick Legal Fog or a Receding Mist?, 41 INT'L LAW. 1091, 1092 (2007).

That the U.S. labeled the DS-1 "peaceful" is irrelevant. The U.S., Russia, and China "have steadfastly described all of their space missions as 'peaceful,'" notwithstanding apparent evidence to the contrary. *See* Maogoto & Freeland, 41 INT'L LAW. at 1100. Actually, "more than half of all American and Russian (and former Soviet Union) spacecrafts presently orbiting the Earth have served and continue to serve military purposes." *Id.*; *see also* Yang Liu, *Earth's First Line of Defense: Establishing Celestial Body-Based Planetary Defense Systems*, 100 INT'L L. STUD. 708, 709 (2023) ("[A]ll systems and techniques that can be used for planetary defense missions can also be used for military operations."). In fact, most scholars and space lawyers also "reached a consensus that using weapons as a means of planetary defense would violate the peaceful purposes clauses" of the Outer Space Treaty. Liu, 100 INT'L L. STUD. at 722.

Further, the U.S.'s interpretation of the word "peaceful" as meaning "non-aggressive," as opposed to "non-military," has been the subject of much disagreement. *See* Maogoto & Freeland, 41 INT'L LAW. at 1100; *see also* Cynthia B. Zhang, *Do as I Say, Not as I Do—Is Star Wars Inevitable? Exploring the Future of International Space Regime in the Context of the 2006 U.S. National Space Policy*, 34 RUTGERS COMPUTER & TECH. L.J. 422, 423 (2008) ("The 2006 [U.S.] National

Space Policy [announcing 'that the United States has free action in space'] caused an international uproar."). Specifically:

> [T]he language [of the new 2006 space policy] suggests that the United States will not hesitate to take active steps to preserve the status quo of space—U.S. supremacy. The language in the new Policy makes the United States the adjudicator and enforcer in determining who, or which entity, may possess the inclination to narrow the United States' space supremacy.

Zhang, 34 RUTGERS COMPUTER & TECH. L.J. at 429. Further, in October 2005, the United States became the first country to oppose an annual nonbinding resolution on "Preventing an Arms Race" in outer space. *Id.* at 424. The U.S. also rejected a proposal by Russia and China to strengthen international laws banning weapons in space. *See id.* at 427; *see also id.* at 428 (noting the U.S. military's "hawkish stance on space power").

"The world reacted with alarm and anger at the 2006 National Space Policy." *Id.* at 430. "After fifty years of space hegemony, the United States now finds it difficult to 'project a peaceful image regarding space activities.'" *Id.* at 459 (citation omitted). It was during this period of worldwide distrust of the U.S.'s proclamations about "peaceful" intentions in outer space that the Empire announced its intention—with the U.S. Government's blessing—to launch into orbit a weapon equipped with "superlasers." That announcement also happened not long after the news that China shot down one of its own satellites with a ballistic missile. *See id*. at 425. That news "caused widespread panic." *Id*.

Other nations asked the United States for permission to permit inspections of the DS-1, under Article XII of the Outer Space Treaty. But the U.S. refused, saying Article XII applies only to installations "on the moon and other celestial bodies." That may be an arguable interpretation of Article XII, but it was no doubt not reassuring.

Because the Outer Space Treaty is not privately enforceable, the Empire and the United States should have been able to anticipate that some actor would "take matters into their own hands" and engage in "methods of self-help." Schmitt, 74 U. MIAMI L. REV. at 587. It certainly should have been foreseeable to the Empire and the U.S. that the "Death Star," a weapon of mass destruction violative of the Outer Space Treaty, could be the subject of a military attack.

B.

Our dissenting colleague highlights the financial and technological hurdles facing anybody who might want to launch an attack into outer space. That hurdle is not as insurmountable as Judge Walt might suggest. In 2016, it was stated that "at least 19 countries have, are developing or are planning to host spaceports for orbital and suborbital launches." Jason Krause, *The Outer Space Treaty Turns 50. Can It Survive a New Space Race?*, 103-APR A.B.A. J. 44, 46 (2017). Further, although a "proton torpedo" certainly sounds daunting, it is the rough equivalent of a guided Tomahawk missile similar to those used by China to destroy its own satellite. Zhang, 34 RUTGERS COMPUTER & TECH. L.J. at 425.

The evidence presented at trial suggested a successful space launch would cost a nation at least $2 billion or so. According to the United Nations, however, that financial constraint narrows the field of potential nations to a mere *176* countries with at least $2 billion in gross domestic product. If it helps, Guatemala's gross domestic product in 2023, per the United Nations, exceeded $104 billion. Tunisia's exceeded $48 billion.

C.

Under Section 448 of the Restatement (Second) of Torts, which Alderaan follows and which was used to instruct the jury on superseding cause, the criminal conduct of a third person is not a superseding cause of harm if the original actor "realized or *should have realized* the likelihood that" an opportunity for a third party to commit that crime might be created and that a third party "might avail himself of the opportunity." RESTATEMENT (SECOND) OF TORTS § 448 (emphasis added). The comments to that section confirm an actor should anticipate third-party criminal conduct if a situation "afford[s] temptations to which a recognizable percentage of humanity is likely to yield." *Id.* § 448 cmt. b.

Further, "[t]he issues of foreseeability and superseding cause are properly for the jury to decide when there may be reasonable differences in opinion."

Napier v. F/V Deesie, Inc., 454 F.3d 61, 69 (1st Cir. 2006); *see also Jensen v. EXC, Inc.*, 82 F.4th 835, 858 (9th Cir. 2023) (holding issue of causation, including superseding and intervening cause, was properly submitted to jury); *Travelers Cas. & Sur. Co. of Am. v. Ernst & Young LLP*, 542 F.3d 475, 487 (5th Cir. 2008) ("[T]he question of superceding intervening cause is so inextricably tied to causation it is *difficult to imagine a circumstance* where such issue would not be one for the trier of fact.") (emphasis in original) (citation omitted); *Putnam Res. v. Pateman*, 958 F.2d 448, 460 (1st Cir. 1992) ("When, as here, the existence of proximate cause turns on an issue of superseding causation . . . the jury's role may be especially significant.").[4]

In light of the above, the possibility that someone would launch an attack against the Death Star was, or at least should have been, reasonably foreseeable. *See Green Plains Otter Tail, LLC v. Pro-Envtl., Inc.*, 953 F.3d 541, 547 (8th Cir. 2020). Accordingly, we do not think the evidence *conclusively* demonstrated that Skywalker's actions were an intervening and superseding cause and that they destroyed the causal chain between the Empire's negligence and Solo's injuries.

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[4] We also disagree with Judge Walt's suggests that the multifactor test from Restatement Section 442 can be reduced to a list of one. The jury was entitled to consider the evidence relating to all six factors in deciding whether Skywalker's actions constituted a superseding cause. *See* RESTATEMENT (SECOND) OF TORTS § 442. The evidence discussed herein undermines several of these factors. Accordingly, the jury was entitled to answer "No" to the proximate-cause question.

D.

We offer one final comment to our dissenting colleague. Judge Walt proposes that a terroristic act should be enough, by itself, to destroy the causal chain. But that conclusion does not follow here, where the Empire and the United States were so brazen as to launch a weapon of mass destruction, known as the "Death Star" and reviled worldwide, into orbit with an implied "BOMB ME" post-it note attached.

WALT, Circuit Judge, dissenting.

I have a bad feeling about the Court's handling of every part of this case. Accordingly, I dissent.

I.

A little more than 66 million years ago, a meteoroid measuring approximately ten kilometers in diameter struck the Earth in the Yucatán Peninsula. The impact created the Chicxulub crater, which spans 120 kilometers in diameter and is more than 30 kilometers deep.

It is now widely accepted that the devastation that resulted from that impact was the leading cause of the Cretaceous-Paleogene extinction event, which wiped out 75% of all plant and animal species on Earth—including all non-flying dinosaurs.

More recently, in 1908 a meteoroid entered Earth's atmosphere and exploded above Siberia, destroying 30 million trees over a 2,150-square-kilometer area. In 2006, another meteoroid struck Norway, resulting in an explosion equivalent to the detonation of between 100 and 500 tons of TNT. Then, in 2013 the Chelyabinsk meteoroid—a mere baby size-wise at only 18 meters—exploded 30 kilometers above ground, releasing 30 times as much energy as that produced by the atomic bomb at Hiroshima. The Chelyabinsk meteoroid caused damage to 7,000 buildings and injured 1,500 people.

Astronomers now tell us the Earth should not fear any such impact in the next 1,000 years. But the Chelyabinsk meteoroid went entirely undetected before atmospheric entry.

Apparently not reassured by its own predictions to the public, NASA has conducted its own studies about planetary defense against near-Earth objects. The "Double Asteroid Redirection Test," or DART, was designed to study how much a spacecraft might deflect an approaching asteroid by ramming into it. Nevertheless, whatever results DART may have yielded, NASA seems no closer to developing any planetary defense system at all, much less one with the ability to quickly react to near-Earth objects that are not discovered until it is too late to launch a satellite at them.

Into that gap stepped Galactic Empire, Inc., which resolved to save the Earth from another extinction event. When it announced its plans to design and launch the DS-1, the Empire cited all these impact examples and explained its peaceful intent, to offer benefits to all mankind. "Planetary defense has been widely recognized as a legitimate mission that benefits all humankind since about the 1980s when scientists concluded that [near Earth objects] can potentially cause large-scale catastrophic consequences to Earth." Yang Liu, *Earth's First Line of Defense: Establishing Celestial Body-Based Planetary Defense Systems*, 100 INT'L L. STUD. 708, 709 (2023).

The United States, too, expressly reassured the world it was not interested in "blowing up planets." *See* Paul Shawcross, *This Isn't the Petition Response You're Looking For*, WE THE PEOPLE: THE WHITE HOUSE, https://petitions.obamawhitehouse.archives.gov/response/isnt-petition-response-youre-looking/ (last visited May 1, 2024).

Notwithstanding these reassurances, an unhinged terrorist group blew up mankind's best chance at planetary defense against mass extinction. Now, an international playboy with minor injuries and supposed damage to a seemingly-always-broken component of his pleasure starship seeks to hold the Empire and the United States government liable for more than two and a half billion dollars.

The terroristic action of Luke Skywalker was a superseding, intervening event, as a matter of law. Whether the international community embraced the DS-1—the focus of the concurring justices' argument—is insignificant. What really matters, in the foreseeability analysis, is whether the Empire and the U.S. should have reasonably foreseen that an unbalanced space pirate would have the financial and technical capabilities to take action on their threats. They should not. Therefore, the trial court should have granted the Empire's and the government's motion for judgment as a matter of law.

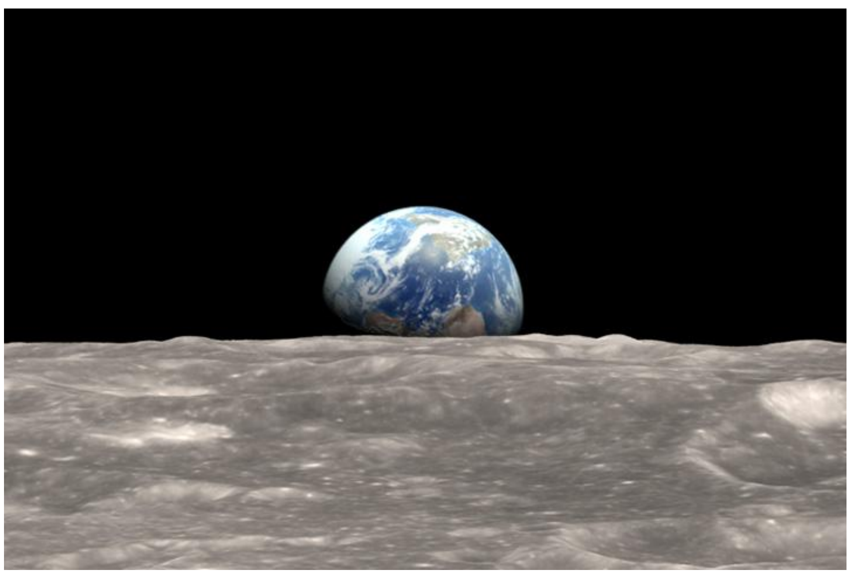
Alternatively, the trial court erred by refusing to transfer venue. Venue for outer-space torts does not, and should never, depend on which landmass the tort is "over" when it happens. As explained below, this erroneous and myopic approach does not and will not scale well as mankind continues to operate farther and farther away from Earth's surface. Once the Court starts down this dark path of extending inapplicable "navigable airspace" or "overflight venue" concepts into outer space, forever will it dominate the destiny of future lawsuits arising from outer-space activities.

The Court has missed an opportunity to announce bright-line rules that will provide guidance to courts and space participants in the future. The majority's "for this case only" holdings are not the answers courts and space participants alike are looking for.

Accordingly, I dissent.

II.

On December 24, 1968, Apollo 8 astronauts Frank Borman, James Lovell, and William Anders were emerging from the dark side of the Moon on their fourth orbit. Anders took this famous "Earthrise" photo.



William Anders, *Earthrise* (photograph Dec. 24, 1968), https://eoimages.gsfc.nasa.gov/images/imagerecords/82000/82693/earthrise_vis_1092.jpg.

Pray tell: which U.S. district was Anders "flying over" when this photograph was taken?

A.

I agree with only one statement from the majority's erroneous venue analysis: "our venue rules are not well-equipped to address torts that occur within outer space." Op. at 26a. But the solution is not to apply antiquated notions about "navigable airspace" or "overflight venue," particularly where the existing rules provide a simpler, more reasonable option here.

Venue properly existed only in California. California is the state in which the DS-1 was defectively designed. Most of the space launches occurred in California; none occurred in Alderaan. Skywalker, with assistance from Alianza Rebelde, attacked and destroyed property owned, designed, launched into orbit, and constructed by a California entity. Thus, California is a district in which a substantial part of the events or omissions giving rise to the plaintiff's claim occurred. 28 U.S.C. § 1391(b)(2). Alderaan was not. The trial court erred by denying the Empire's motion to transfer venue.

B.

1.

There must be some logical end to the doctrine of "overflight venue," if it exists. That concept does not and will not scale as mankind's outer-space activities extend farther and farther from Earth orbit. Note this passage from the *Lozoya* panel opinion[1] relied-on by the majority:

[1] The original panel opinion in *Lozoya* was wrong, which was why the *en banc* court overruled it. The majority here doubles down on erroneous reasoning properly rejected by the *en banc* court. As Judge Kenobi is wont to ask, "Who is the more foolish: the fool or the fool who follows him?"

> We acknowledge a creeping absurdity in our holding. Should it really be necessary for the government to pinpoint where precisely in the spacious skies an alleged assault occurred? Imagine an inflight robbery or homicide—or some other nightmare at 20,000 feet—that were to occur over the northeastern United States, home to three circuits, fifteen districts, and a half-dozen major airports, all in close proximity. How feasible would it be for the government to prove venue in such cluttered airspace?

United States v. Lozoya, 920 F.3d 1231, 1242 (9th Cir. 2019) (footnote omitted), *overruled en banc*, 982 F.3d 648 (9th Cir. 2020). Now imagine the "creeping absurdity" of trying to extend the majority's "overflight venue" concept to outer-space activities conducted in high Earth orbit, or even farther? It is neither feasible nor even possible.

As one moves sufficiently far away from Earth, space objects cease to be "over" or "above" specific districts—or even countries or continents. Given enough distance from Earth, outer-space torts could fairly be considered "over" every district, country, and continent in whatever hemisphere happens to be facing the actors when the tortious conduct occurs.

What about a tort that happens on Mars? Can one really pinpoint a singular judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, *see* 28 U.S.C. § 1391(b)(2), if an entire hemisphere is "below" the tort when it occurs?

The concepts of "navigable airspace" and "overflight venue" do not and should not apply to venue determinations pertaining to activities that occur in space. The same bright-line rules that distinguish sovereign airspace (on Earth) from non-sovereign outer space can and should apply to venue questions, too.

2.

The majority disregards legal notions about national sovereignty over airspace as somehow insignificant to venue determinations. They are not. The entire stated rationale for the majority's "overflight venue" rule is premised upon the assumption that each state owns and controls the navigable airspace above it. *See* Op. at 28a. That assumption is nothing more than a disguised notion about sovereignty.

That fact follows from the Government's distinguishing sovereignty over *airspace* from non-sovereignty over outer space. *Compare* 49 U.S.C. §§ 40103(c), (d) (prohibiting foreign aircraft from navigating in U.S. airspace without permission), *with* Dr. Jinyuan Su, *The Delimitation Between Airspace and Outer Space and the Emergence of Aerospace Objects*, 78 J. AIR L. & COM. 355, 359 (2013) ("When the Soviet Union and the United States began launching artificial satellites, neither country sought consent from other states over whose territory the satellites orbited. Furthermore, the launches did not elicit any accusations that a state's sovereignty had been violated.").

The simple answer is that countries do not claim sovereignty over the outer space "above them." *See also* Outer Space Treaty, 18 U.S.T. 2410, 1967 WL 90200, art. II ("Outer space . . . is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means."). For the same reason, "overflight venue" rules that depend upon the existence of state airspace sovereignty necessarily break down in places where such sovereignty ceases to exist. Accordingly, the majority should apply the same non-sovereignty principles to the question of venue and hold "overflight venue" does not exist in space.

3.

Although there is no set legal definition of "space," under the majority rule that is accepted by most nations, "the boundary between outer space and air space should be the lowest altitude (perigee) at which artificial earth satellites can remain in orbit without being destroyed by friction with the air." James A. Beckman, *Citizens Without a Forum: The Lack of an Appropriate and Consistent Remedy for United States Citizens Injured or Killed as the Result of Activity Above the Territorial Air Space*, 22 B.C. INT'L & COMP. L. REV. 249, 254 (1999). That boundary exists approximately 90 kilometers above the Earth's surface. *Id.* at 254 n.25. Below that line, venue may be determined under the majority's "overflight venue" rule. Above it, that rule should not apply.

C.

The approach proposed by the concurring judges—to affirm the trial court's venue ruling under Section 1391(b)(3)—is no better. There is no evidence, either way, indicating whether Luke Skywalker flew into any airspace over which Alderaan does or ever could claim sovereignty. The concurring judges' contrary conclusion apparently stems from their decision to treat outer space "above" Alderaan as its "navigable airspace."

But that question-begging exercise brings us back to square one. Because Alderaan does not have sovereignty in outer space, Alderaan cannot exercise personal jurisdiction over Skywalker simply because he flew through "its" non-sovereign space. If it could, there would be no reason for venue under subsection (b)(3) because Skywalker's actions that supposedly gave rise to such personal jurisdiction already would support venue under subsection (b)(2).

D.

As for the placement of burdens, the Court should punt on that question for another day. No matter who bore the burden of proof and persuasion, venue was improper as a matter of law because a substantial part of the events or omissions giving rise to Han Solo's claims did not occur in the district of Alderaan.

But if the Court insists upon weighing in on that circuit split, it should adopt the majority rule. The majority rule is the majority rule for a reason—it's the better approach.

The majority suggests the burden should belong to the defendant because improper venue is an affirmative defense. Op. at 24a-25a. "But so too is personal jurisdiction an affirmative defense, and the plaintiff has the burden of establishing it." *MB Fin. Bank, N.A. v. Walker*, 741 F. Supp. 2d 912, 915 (N.D. Ill. 2010) (citations omitted). There are several other parallels between improper venue and personal jurisdiction. *See id*. "[B]oth are personal privileges of the defendant . . . ." *Leroy v. Great W. United Corp.*, 443 U.S. 173, 180 (1979). And both are affirmative defenses that do not relate to the merits of the claim. Thus, there is no compelling reason why a plaintiff should have the burden to establish personal jurisdiction but not proper venue.

Moreover, although a defendant may be better equipped to argue the merits of a venue transfer based on convenience, the same principles do not extend here. The plaintiff often has more knowledge about the facts of his claim than the defendant, and that is certainly true within the short time period in which a defendant must challenge venue as improper. *See* FED. R. CIV. P. 12(b), (h)(1). Thus, the plaintiff is usually in a better position to demonstrate venue than the defendant is to defeat it. Accordingly, although the Court need not decide the question to resolve this case, the majority rule provides the better approach.

II.

A proper venue ruling should have ended this destructive conflict. Alternatively, the district court should have granted Appellants' JMOL motion.

A.

The CSLAA does not apply here. "We do not . . . construe statutory phrases in isolation; we read statutes as a whole." *United States v. Morton*, 467 U.S. 822, 828 (1984). Properly read as a whole, the CSLAA provides a payment scheme that applies only to injuries that occur during launch or reentry—not to outer space "activities" in general. Every substantive statute within Chapter 509 repeatedly refers to space launches and reentries. *See, e.g.,* 51 U.S.C. §§ 50901, 50902, 50904, 50914, 50915. Thus, logically, an "activity carried out under the license," as used in Section 50915(a), reasonably means <u>only</u> launches and reentries. An injury that "results from an activity carried out under the license" is, similarly, an injury that occurs during space launch or reentry.

The majority defends its overbroad reading of the phrase "activity carried out under the license" as supposedly justified by the U.S.'s treaty obligations under the Liability Convention. But that treaty expressly does not apply to this claim brought by an injured U.S. citizen. *See* Liability Convention, 24 U.S.T. 2389, art. VII. Thus, we should not be using an inapplicable, non-self-executing treaty to decide what Congress meant when it used *entirely different language* than that treaty.

B.

Assuming the CSLAA even applies here, I agree with the concurring judges that Section 50915's requirement of a "successful claim" obligated Solo to demonstrate traditional state-law negligence elements, including proof of proximate cause. But notwithstanding the jury's affirmative answer to the proximate-cause jury question, the trial court still should have granted judgment as a matter of law.

1.

Generally, "questions of whether an intervening act severs the chain of causation depend on the foreseeability of the intervening act and should be determined by the finder of fact." *Port Auth. of N.Y. & N.J. v. Arcadian Corp.*, 189 F.3d 305, 318 (3d Cir. 1999) (citation omitted). Nevertheless, "in appropriate circumstances, the court may resolve the issue as a matter of law." *Id.* (citation omitted). That is precisely what should have happened here.

The jury was appropriately instructed about the factors to consider in determining whether Skywalker's criminal terroristic attack was a superseding cause. *See* RESTATEMENT (SECOND) OF TORTS §§ 442, 448. I do not want to spend much time picking apart the jury's incorrect and unsupported finding of proximate cause. But I do want to highlight one of the Section-442 factors that should have resulted in judgment as a matter of law for the Empire and United States.

That factor asks whether the "operation or consequences" of an intervening cause "appear after the event to be extraordinary rather than normal in view of the circumstances existing at the time of its operation." RESTATEMENT (SECOND) OF TORTS § 442(b). The case law suggests this factor, by itself, is grounds alone for a court to decide the superseding-cause issue as a matter of law: "The issue of responsibility for the *highly extraordinary consequence* is also a matter of law for the court. The idea of non-liability for the *highly extraordinary consequence* as a matter of law for the court has already been recognized in this state." *Port Auth.*, 189 F.3d at 318 (citations omitted) (cleaned up) (emphases added).

Other courts have reached the same conclusion. *See Hundley v. Dist. of Colum.*, 494 F.3d 1097, 1104 (D.C. Cir. 2007) (confirming defendant may not be held liable for harm it caused if chain of events leading to injury appears "highly extraordinary in retrospect") (citation omitted). It is only "where misconduct was to be anticipated, and taking the risk of it was unreasonable, that liability will be imposed for consequences to which such intervening acts contributed." *Id.* (citation omitted).

Here, and as explained below, the circumstances of Skywalker's intervening criminal actions were as "highly extraordinary" as they come. *Hundley*, 494 F.3d at 1104; *Port Auth.*, 189 F.3d at 318; RESTATEMENT § 442. The district court therefore should have concluded Skywalker's conduct was a superseding cause and granted Appellants' JMOL.

2.

The fact that Defense System One ("DS-1") may have been "controversial" to a select group of environmentalists and nations evidently jealous of the U.S.'s space supremacy does not make it foreseeable that anybody would, or more importantly, *could*, do anything *militarily* about it.

The concurring judges ominously suggest the possibility that other nations might engage in "self-help." Op. at 63a. The unmistakable connotation from that passage suggests such "self-help" would be military in nature. But that conclusion does not follow from the law-review article they cite. Instead, the context of that discussion makes plain the author was referring to peaceful means of self-help, including unilaterally imposing monetary sanctions or seeking the assistance from the Word Trade Organization, "which can expel members or impose trade sanctions for treaty violations." Clayton J. Schmitt, Note, *The Future is Today: Preparing the Legal Ground for the United States Space Force*, 74 U. MIAMI L. REV. 563, 587 & n.153 (2020). Moreover, the Outer Space Treaty does not authorize or even contemplate the use of military action to remedy treaty violations. *See* Outer Space Treaty, 18 U.S.T. 2410, 1967 WL 90200, arts. IX, XIII ("Any practical questions arising in connection with activities carried on . . . shall be resolved by the States Parties . . . either with the appropriate international organization or with one or more States members of that international organization.").

It also is significant here that this attack was not carried out by any treaty member of the Outer Space Treaty or even by any other nation. Thus, it is "highly extraordinary" that this outer-space attack was conducted, not by national entities with substantial financial resources and motivation to protect the non-sovereignty of space, but by a private ragtag "rebel alliance" without support from <u>any</u> nation.[2] Thus, whatever objections other countries may have lodged against the DS-1 are of no moment here, because <u>none</u> of them did anything about it.

3.

Moreover, the daunting financial and technical capabilities required to stage an attack of this nature in outer space further confirm the "highly extraordinary" nature of Skywalker's superseding actions. As of 2012, when the plans for the DS-1 were announced, there were only 12 countries—14 if one includes Guatemala and Tunisia, from which these private spacecraft launched—that even had any capacity to launch into outer space. *See* Jameson Rohrer, Note, *Deciphering and Defending the*

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[2] Alianza Rebelde no longer exists. Following these events, its Guatemalan corporate charter was forfeited for its failure to maintain books and records, file required reports, utilize appropriate accounting procedures, hold directors' meetings, and comply with its legal and tax obligations. Alianza's sole director (also its financial backer) explained that Alianza had to repeatedly relocate its headquarters and that key documents had been misplaced during those moves. When asked about Alianza's failure to regularly hold directors' meetings, Leia Organa testified that, because she was Alianza's only director, by definition, she was *always* in a "director's meeting." She quipped: "I am not *a* committee; I am *the* committee."

European Union's Non-Binding Code of Conduct for Outer Space Activities, 23 DUKE J. COMP. & INT'L L. 187, 201 (2012). Further, there was no evidence presented about how Luke Skywalker and Alianza Rebelde got possession of a X-wing starfighter, much less one equipped with proton torpedoes.

On top of those *technical* limitations, there are considerable financial hurdles. The evidence showed *sub-orbital* space-passenger tickets cost as little as $1 million. But the evidence also showed that, to ascend into low Earth orbit, even a *passenger ticket* can cost more than $55 million. The evidence also demonstrated that it can cost $2 billion or more to launch a single mission into space. Finally, the evidence demonstrated that, since 2018, there have been only three billionaires with the financial ability, interest, and technical capabilities to launch into space. One of them is Han Solo. Neither of the others is Luke Skywalker, and neither had anything to do with this operation.

4.

Instead, this attack was staged by a private entity, evidently controlled by a single director—albeit a wealthy one—that operated deep within the forests amid the Mayan ruins near Tikal, Guatemala. Given the financial and technical barriers discussed above, the fact that Alianza Rebelde was able to stage a space launch at all, much less an attack on a planetary defense system in low Earth orbit, also was a highly extraordinary occurrence. Further, that entity had to gain possession of stolen plans for the DS-1—notwithstanding the Empire's diligent efforts to recover those plans—to even learn about the DS-1's design defect. And it had to launch its attack quickly, before those plans could be recovered.

And finally, the evidence shows this event happened because a young moisture-farmer-turned-terrorist from Tatooine, Tunisia *turned off his targeting computer* but *still* hit a 2-meter-wide target anyway.

These are precisely the kind of "highly extraordinary" circumstances that should have prompted the district court to grant judgment as a matter of law. The constellation of circumstances—each highly extraordinary—had to come into perfect alignment for this to happen. *See* RESTATEMENT § 442(b).

C.

Finally, the district court could and should have concluded, as a matter of law, that Skywalker's intervening terroristic action was a superseding cause. That is precisely the conclusion other courts have reached when faced with other acts of terrorism:

> *Port Authority* arose in the wake of the 1993 World Trade Center bombing. The plaintiffs alleged that the defendant fertilizer manufacturers were negligent in the manufacture and sale of the fertilizer used in the attack. We held "as a matter of law that the World Trade Center bombing was not a natural or probable consequence of any design defect in defendants' products. In addition,

> the terrorists' actions were superseding and intervening events breaking the chain of causation." *Id*. at 319; *see also Gaines-Tabb v. ICI Explosives, USA, Inc*., 160 F.3d 613, 618 (10th Cir. 1998) (after Oklahoma City bombing, defendant fertilizer manufacturer held not responsible for the criminal conduct of bomber in using the fertilizer to make the bomb). Similarly, here, a terrorist attack on a nuclear facility would be a superseding cause of the environmental effects felt after an attack.

N.J. Dep't of Envtl. Prot. v. U.S. Nuclear Regulatory Comm'n, 561 F.3d 132, 141 (3d Cir. 2009) (some citations omitted); *see also Port Auth.*, 189 F.3d at 319 ("[W]e similarly hold as a matter of law that the World Trade Center bombing was not a natural or probable consequence of any design defect in defendants' products. In addition, the terrorists' actions were superseding and intervening events breaking the chain of causation.").

III.

For all these reasons, the district court in Alderaan erred by exercising venue over this civil lawsuit and by denying Appellants' renewed motion for judgment as a matter of law. This Court should reverse the judgment. Because it does not, I respectfully dissent from the Court's opinion and judgment.