No. 24-2187

IN THE

SUPREME COURT OF THE UNITED STATES

NOVEMBER TERM 2025

GALACTIC EMPIRE, INC. and
The UNITED STATES,

Petitioners,

— versus —

Han SOLO,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Sixteenth Circuit

BRIEF FOR RESPONDENT

TEAM 83

Attorneys for Respondent

QUESTIONS PRESENTED

I. Whether the district court properly exercised venue for a tort that occurred in Earth orbit when neither side presented competent evidence on the topic of venue, so the burden of proof was allocated to the movant.

II. Whether the Commercial Space Launch Activities Act contemplates but-for causation in its compensation scheme.

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The judgment of the United States District Court for the District of Alderaan, designated as case no. 19-cv-421(TK), is unreported. The opinion of the United States Court of Appeals for the Sixteenth Circuit, designated as case no. 22-cv-1138, is likewise unreported. The majority opinion, authored by Judge Jinn, is found in the record on pp. 2a-52a. Judge Windu's concurring opinion is found in the record on pp. 53a-66a. Judge Walt's dissenting opinion is found in the record on pp. 67a-84a.

STATEMENT OF JURISDICTION

The United States District Court for the District of Alderaan had jurisdiction over Solo's damages claim under 51 U.S.C. § 50914(g), which provides that "any claim by a third party or space flight participant 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." R. at 16a.

The United States Court of Appeals for the Sixteenth Circuit exercised jurisdiction over the appeal from the district court's final judgment under 28 U.S.C. §§ 1291 and 1294(1). R. at 17a. Petitioners Galactic Empire, Inc. and the United States filed petitions for writs of certiorari, which this Court granted. R. at 0. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fifth Amendment to the United States Constitution and Article III of the Constitution. U.S. Const. Art III, amend. V. This case also involves

the following statutory provisions: 28 U.S.C. § 1391(b) and 51 U.S.C. §§ 50901-50924 (the Commercial Space Launch Activities Act).

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

This case revolves around a critical, negligently designed vulnerability in a space station that, when hit with a proton torpedo by a Tunisian farmer, exploded and damaged a nearby ship and injured its captain. R. at 2a.

Han Solo. Han Solo, the American billionaire who founded Solleu, counts space tourism as one of his hobbies. R. at 3a-5a. He built a ship dubbed the *Millenium Falcon* (the "Falcon") for $18.2 billion that he used for that purpose. R. at 2a-3a, 14a.

The Empire and DS-1. Galactic Empire, Inc. (the "Empire") is an American subsidiary of Galgal, the company behind the world's most popular search engine. R. at 7a. The Empire is headquartered in Mountain View, California. R. at 7a. It was founded in 2007 to focus on "planetary defense," inspired by a meteoroid that struck Northern California that year. R. at 7a. The Empire announced plans in 2012 to fill what they perceived as a "gap" in planetary defense by building a large space station known as "Defense System One," or "DS-1," in Earth orbit. R. at 3a, 7a, 68a. The goal of DS-1 was to shoot and destroy any space objects that come on a collision course with the Earth. R. at 68a. The spherical space station would be 120 kilometers in diameter and powered by a hypermatter reactor, capable of producing nearly unlimited power, when completed. R. at 7a-8a. DS-1 would destroy approaching space

objects with its equipped "superlaser"—a massive weapon composed of 8 smaller hypermatter tributary laser beams focused through crystals. R. at 7a-8a.

DS-1's announcement engendered "international outrage:" DS-1 could qualify, claimed its detractors, as a "weapon of mass destruction" in violation of the Outer Space Treaty, which prohibits such weapons from being placed in Earth's orbit. R. at 3a, 59a. Those detractors dubbed DS-1 the "Death Star," presumably because of its advanced weapon capabilities. R. at 59a. Nonetheless, the Empire proceeded with the plan, which would see the station built entirely in space from components launched into orbit. R. at 8a. The station orbited at an altitude of approximately 460 kilometers during its construction; the Empire planned on moving the DS-1 to an orbit of 65,000 kilometers once the station was complete. R. at 8a. During the construction of DS-1, the Empire launched hundreds of supply missions into orbit, mostly from California. R. at 12a-13a. The Empire launched missions from other locations in the United States, but never from the state of Alderaan. R. at 13a.

The design of DS-1 had a major fault: A direct hit by a proton torpedo to a 2-meter-wide thermal exhaust port would cause the entire station to explode. R. at 13a. The Empire discovered the fault between one and two weeks before the destruction of DS-1, and it sought to "keep that information private and avoid its dissemination to those thought to have the means and desire to take advantage of the design flaw." R. at 13a.

Luke Skywalker. A young Tunisian moisture farmer named Luke Skywalker had the means and desire to take advantage of the design flaw. On May 25, 2017, he

piloted an Incom T65-B X-wing starfighter into low earth orbit and hit the exhaust port with a proton torpedo, setting off the chain-reaction that ended with the complete destruction of DS-1. R. at 2a-3a, 13a. Skywalker launched the X-wing from Guatemala with the assistance of Alianza Rebelde S.A., a Guatemalan company. R. at 3a. The Republic of Guatemala did not know about the launch. R. at 3a.

The explosion of the "Death Star" created "thousands of fragments," some of which struck Mr. Solo's unique and irreplaceable spaceship, the Falcon. R. at 3a. The fragments of DS-1 damaged the Falcon's "Isu-Sim SSP05" hyperdrive, and it will cost $4.5 billion to repair. R. at 14a. Solo also suffered bodily injury as a result of the collision. R. at 14a.

The CSLAA. The Commercial Space Launch Activities Act (the "CSLAA") is a statutory scheme that governs the "private launching, reentry, and associated services" to "enable the United States to retain its competitive position internationally, contributing to the national interest and economic well-being of the United States." 51 U.S.C. § 50901(a)(4), (a)(5); *see generally id.* §§ 50901-50924. "The Secretary of Transportation is to oversee and coordinate the conduct of commercial launch and reentry operations;" the CSLAA implements this oversight through a "clear legal, regulatory, and safety regime" for commercial space launches and related activities. *Id.* § 50901(a)(14), (b)(3).

A license under § 50904 is required "for a person to launch a launch vehicle or to operate a launch site or reentry site, or to renter a reentry vehicle, in the United States" or for a citizen of the United States (defined as, in relevant part, "an

individual who is a citizen of the United States" or "an entity organized or existing under the laws of the United States or a State") to do the same anywhere else in the world.[1] *Id.* §§ 50902(1), 50904(a). A "launch vehicle" is "a vehicle built to operate in, or place a payload or human beings in, outer space," and a "reentry vehicle" is "a vehicle designed to return from Earth orbit or outer space to Earth," including a launch vehicle that be reused and return to Earth "substantially intact." *Id.* § 50902(11), (19). To "launch" is, in relevant part, "to place…a launch vehicle or reentry vehicle…in Earth orbit in outer space[] or otherwise in outer space." *Id.* § 50902(7)(B)-(7)(C).

The chapter also creates an insurance and indemnification scheme at issue in this appeal. A party that receives a license may obtain liability insurance, which does not need to exceed $500 million, "to compensate for…claims by[] a third party for death, bodily injury, or property damage or loss resulting from an activity carried out under the license."[2] *Id.* § 50914(a)(1)(A), (a)(3)(A)(i); *see also* 14 C.F.R. § 440.9(c)(1). For a "a successful claim (including reasonable litigation or settlement expenses)" by

[1] Solo does not dispute that he did not obtain a license on May 25, 2017 for his launch of the Falcon from Mos Eisley, Djerba Island, Tunisia; he paid the $100,000 fine levied against him. *See* 51 U.S.C. 50917(a), (c)(1).

[2] If the party elects not to carry liability insurance, they must "demonstrate financial responsibility in amounts to compensate" for the above. 51 U.S.C. § 50914(a)(1). As a note, the $500 million amount is meant to compensate "for the total claims related to *one* launch or reentry." *Id.* § 50914(a)(3) (emphasis added). Because DS-1 was the product of *many* launches, the Empire potentially should have had liability insurance in the amount of $500 million *per launch*, all of which would be applicable to Solo's claims. This is the first claim under the CSLAA, so no court has had the opportunity to address this question. R. at 4a. The United States could have potentially asserted this as a defense to their payment obligation, but because the government did not raise the issue below, it cannot be reached on appeal. The applicable regulation contains similar language: "The FAA will prescribe for each licensee or permittee the amount of insurance required to compensate the total of covered third-party claims for bodily injury or property damage resulting from a licensed or permitted activity in connection with *any particular* launch or reentry." 14 C.F.R. § 440.9(c) (emphasis added).

a third party, the United States will pay the damages above and beyond the amount of insurance required under the previously mentioned section, indemnifying the licensee. 51 U.S.C. § 50915(a)(1), (a)(1)(A). The claims paid under § 50915 will not exceed $1.5 billion, adjusted for inflation since January 1, 1989.[3] *Id.* § 50915(a)(1)(B). The district court was "unsure" which date to use for the inflation calculation, so it calculated amounts reflecting the date of the destruction of DS-1 ($3.02 billion), the date suit was filed ($3.16 billion), and the date of judgment ($3.65 billion); all three amounts exceed the "share" of Solo's claim allocated to the United States by the district court, so it is immaterial which date is used for the calculation. R. at 16a. Before any § 50915 payment is made, the United States must be notified and "given an opportunity to participate or assist in the defense of the claim or action." 51 U.S.C. § 50915(b), (b)(1).

The Empire complied with its duties under the CSLAA for every launch that contributed to the construction of DS-1, applying for and receiving Chapter 509 permits for each launch, and it carried the § 50914(a)(1)(A)-required $500 million in liability insurance at all relevant times. R. at 11a. Solo and the Empire provided the United States with the notice required under § 50915(b)(1), and as stated above, the United States intervened under § 50915(b)(2). *See also* 14 C.F.R. § 440.19(e)(2) (implementing the requirements found in 51 U.S.C. § 50915(b)(2) regarding the "participation or assistance in the defense…by the United States, at its election.").

[3] § 50915 also limits claims paid by the government to "the total amount of successful claims *related to one launch* or reentry." 51 U.S.C. § 50915(a)(1) (emphasis added).

II. NATURE OF THE PROCEEDINGS

Solo filed suit in May 2019 in the U.S. district court for the State of Alderaan, naming Skywalker, Alianza Rebelde, the Republic of Guatemala, and the Empire as defendants. R. at 14a. He sought to recover for both his bodily injuries and for the damage to the Falcon. R. at 14a. Skywalker and Alianza Rebelde settled with Solo before trial. R. at 5a. The United States intervened to "assist in the defense of the claim" against the Empire. R. at 12a; 51 U.S.C. § 50915(b)(2).

Guatemala moved to dismiss Solo's claims, asserting sovereign immunity, but the district court denied the motion. R. at 6a. Guatemala next moved for and was granted summary judgment because there was no genuine issue of material fact as to Guatemala's liability to Solo, given Guatemala's lack of foreknowledge or approval of Skywalker's actions; Solo did not appeal that ruling. R. at 6a.

The Empire made a timely Rule 12(b)(3) motion, claiming venue in Alderaan was improper. R. at 15a; *See* Fed. R. Civ. P. 12(b)(3). Only the Empire challenged venue in Alderaan. R. at 17a. The district court did not certify its ruling for interlocutory appeal, and the Empire did not seek a writ of mandamus against that ruling, so the Court of Appeals for the Sixteenth Circuit reviewed the venue challenge first after the district court entered final judgment. R. at 17a-18a; *See* 28 U.S.C. § 1292(b). Solo's pleading alleged that venue in the District of Alderaan was proper under the general venue statute as a "judicial district in which a substantial part of the events or omission giving rise to the claim occurred." R. at 18a; 28 U.S.C. § 1391(b)(2). 28 U.S.C. § 1391(f)(1) sets out the same provision for civil actions such as

this one against foreign states like Guatemala, though Guatemala did not challenge venue.

Solo alleged that, at the time of its destruction, "DS-1 was orbiting in low Earth orbit directly above Alderaan." R. at 20a. Skywalker accordingly "entered the navigable airspace…directly above Alderaan" when he fired on DS-1 at close enough range to hit the small thermal exhaust port. R. at 20a. Solo also alleged that he was in the Falcon in low Earth orbit directly above Alderaan, near DS-1, when it exploded and the fragments struck the Falcon, injuring him and damaging the ship. R. at 20a.

The district court held an evidentiary hearing concerning the Empire's Rule 12(b)(3) motion, but the hearing was inconclusive. R. at 20a. Solo offered Wedge Antilles as an expert to testify that the relevant events all occurred directly above Alderaan. R. at 20a-21a. The court deemed Antilles's testimony unreliable and struck it.[4] *See* Fed. R. Evid. 702; *see generally Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Solo additionally offered his own testimony that the Falcon's navigational computer showed that the Falcon was in low Earth orbit above Alderaan at the time of DS-1's destruction. R. at 21a. The navigational computer data itself did not confirm that testimony (it showed Solo as orbiting above Ethiopia at the time of

[4] The district court opined that "Antilles's opinions lacked a sufficient factual basis:" Antilles examined news reports about where fragments from DS-1 deorbited and ultimately landed and determined that more fell on Alderaan than any other State. R. at 21a. H, however, did not account for the fragments' preexisting horizontal velocity (which they had because DS-1 was orbiting above the Earth) in his determination. R. at 21a. "[D]e-orbiting objects generally do not fall straight down but instead continue to follow a curved path around the Earth." R. at 21a. This generalization does not account for the violent explosion that shattered DS-1 and sent fragments flying in all directions; DS-1 did not de-orbit from losing velocity or an impact—it exploded and sent fragments in every direction. Nevertheless, the district court found that "the testimony [was not] based on sufficient facts or data" to be admissible as expert testimony. R. at 21a, note 12; Fed. R. Evid. 702(b).

the collision), but Solo testified that it was likely faulty from the collision that damaged his hyperdrive. R. at 21a. The district court excluded both Solo's testimony about the navigational computer readout as hearsay and the computer data itself. R. at 21a. Skywalker invoked his Fifth Amendment right to remain silent and refused to testify concerning the question of venue (or his actions generally, for that matter). R. at 22a; *See* U.S. Const. Amend. V. The Empire decided to present no evidence supporting its venue motion. R. at 21a.

The district court, then, had to determine whether venue in Alderaan was proper with no competent evidence. R. at 21a-22a. The court determined that the movant, the Empire, bore the burden of proof for the improper venue motion; because the Empire did not meet its burden of proof, the district court denied the Rule 12(b)(3) motion. R. at 22a. The district court also found that venue was proper in any case in the district of Alderaan under 28 U.S.C. § 1391(b)(2) "because a substantial part of the events giving rise to the claim occurred in Alderaan." R. at 22a.

The case proceeded to trial against the Empire and the United States as intervenor. R. at 15a. The jury found that the Empire and Skywalker had both been negligent, apportioning 50 percent of the liability for Solo's damages to each party. R. at 15a. The jury assessed Solo's bodily injury damages at $1 million and his property damage at $4.499 billion for a total damage award of $4.5 billion. R. at 15a. Alderaan follows the "proportionate share" approach to settlement credits; thus, "no tortfeasor can be required to make [a] contribution beyond his own equitable share of the liability." R. at 15a; Restatement (Second) of Torts § 886A (A.L.I. 1979); *see also*

McDermott, Inc. v. AmClyde, 511 U.S. 202, 209-10 (1994). The Empire was assigned 50 percent of the responsibility for Solo's damages, so their share of the damages was $2.25 billion. R. at 15a. The total judgment entered by the district court against the Empire was $2.7 billion, following the district court's award of prejudgment interest to Solo.[5] R. at 15a.

The district court found that the CSLAA does not contemplate a direct action against the United States,[6] so the court did not enter judgment against the United States directly. R. at 16a. The judgment does, however, contain a recital of the government's "share" of the damages under 51 U.S.C. § 50915(a): the $2.2 billion awarded in excess of the Empire's $500 million liability insurance policy. R. at 16a.

The Empire and the United States both made and renewed motions for judgment as a matter of law under the Federal Rules of Civil Procedure Rule 50(a) and (b). R. at 35a. They argued that, though DS-1 negligently contained a design flaw, "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." R. at 35a. Solo argued, and the district court agreed, that the CSLAA contemplates but-for causation rather than the Alderaanian standard of proximate cause. R. at 35a. Nevertheless, the district court submitted a question to the jury on the issue of proximate cause and superseding cause, and the jury found that the Empire proximately caused Solo's damages.

[5] "The district court awarded Solo prejudgment interest at the then-applicable prime rate (4 percent) for 5 years:" $450 million. R. at 15a.
[6] The parties briefed this issue; it was not appealed. R. at 16a.

The United States Court of Appeals for the Sixteenth Circuit affirmed the district court's judgment in all respects. R. at 52a.

SUMMARY OF THE ARGUMENT

I.

Venue for torts committed in Earth orbit is appropriate in the venue over which the tort occurred because it best matches Congressional intent and the scientific reality of objects orbiting Earth: if a reasonably precise time is known, the point on the Earth over which an event occurred is easily ascertainable.

This case also presents the question of who bears the burden of proof for an improper venue motion. The district court correctly allocated the burden to the moving party, and this Court should do the same. This allocation of the burden of proof aligns with the purpose of the general venue statute and its most recent amendments; it is also the most just and efficient way to resolve venue disputes that arise during litigation. While venue may be compared to subject-matter jurisdiction and personal jurisdiction, venue does not implicate Constitutional concerns like the jurisdictional requirements do. It is more accurate to compare venue to the doctrine of forum non conveniens because, like with the doctrine, the purposes of venue statutes are convenience and efficiency.

II.

The CSLAA applies to this claim because the construction and operation of DS-1 was an activity that arose out of the Empire's licenses under the CSLAA. To hold otherwise would be absurd, as it would render the CSLAA ineffective as to any

conduct that is not a launch or a reentry—i.e., any continuing activity in space. The statute is written clearly to have broad application.

Also, the CSLAA contemplates compensation for an injured party when but-for causation is proven. This is supported by the text of the statute itself; the statute provides recovery for a "successful claim (including reasonable litigation or settlement expenses)." If the successful claim required proximate cause, a judicial determination of some kind would be necessary, rendering the modification of "successful claim" ("settlement expenses") moot. But-for causation aligns with the traditional interpretation of the phrase "resulting from," rooted in its ordinary meaning. Finally, but-for causation also helps the United States make good on its treaty obligations and aligns with Congressional intent.

This Court should AFFIRM the judgment of the United States Court of Appeals for the Sixteenth Circuit.

ARGUMENT

Standard of Review. The standard of review for a motion to dismiss for improper venue is de novo. *Mitrano v. Hawes*, 377 F.3d 402, 405 (4th Cir. 2004); *see also Dr. Robert L. Meinders, D.C., Ltd. v. UnitedHealthcare, Inc.*, 800 F.3d 853, 856 (7th Cir. 2015) (reviewing a Rule 12(b)(3) dismissal de novo). The district court here made no factual findings as to the matter of venue, which would be reviewed under the clearly erroneous standard. R. at 22a; *Gulf Ins. Co. v. Glasbrenner*, 417 F.3d 353, 355 (2d Cir. 2005). Accordingly, the venue questions presented, involving the interpretation of Rule 12(b)(3) and 28 U.S.C. § 1391(b)(2), are purely legal. *See*

Merchant v. Corizon Health, Inc., 993 F.3d 733, 739 (9th Cir. 2021) ("we interpret the Federal Rules of Civil Procedure de novo."); *Call Henry, Inc. v. U.S.*, 855 F.3d 1348, 1354 (Fed. Cir. 2017) ("we interpret statutes…de novo").

The denial of a motion for a judgment as a matter of law is reviewed de novo. *Kim v. Am. Honda Motor Co.*, 86 F.4th 150, 159 (5th Cir. 2023). A reviewing court, however, "applies the same deferential standard as the district court does in reviewing the jury's verdict." *Id.* That standard is found in the Federal Rules of Civil Procedure 50(a): the court must find that "a reasonable jury would not have a legally sufficient evidentiary basis to find for" a party after the party "has been fully heard" to grant the other party's motion. *See id.* The standard of causation required by the CSLAA is a purely legal question that this Court reviews de novo. *See Call Henry*, 855 F.3d at 1354.

I. THE DISTRICT COURT FOR THE DISTRICT OF ALDERAAN PROPERLY EXERCISED VENUE BECAUSE THE BURDEN OF PROOF IS BEST ON THE MOVANT IN A VENUE DISPUTE, AND VENUE WAS PROPER IN THE DISTRICT OF ALDERAAN IN ANY CASE.

The Empire challenges the district court's determination that venue was proper in Alderaan on appeal. R. at 26a. It contends instead that venue would only be proper in California "because the only actions that occurred ***in*** a judicial district occurred in California." R. at 26a (emphasis original). Venue may be appropriate in California—but the district court was forced to make its determination about venue in Alderaan without the Empire presenting any evidence as to why venue in Alderaan was not appropriate or why venue in California would be appropriate. R. at 21a. The district court, then, decided based on the allocation of the burden of proof, which it properly

allocated to the moving party in the case of a Rule 12(b)(3) motion for improper venue. R. at 22a. The district court's decision was correct and just, in alignment with the goals and aims of the concept of venue in federal courts and the critical distinction from jurisdictional requirements.

A. 28 U.S.C. § 1391 is the correct and appropriate venue statute to use under the CSLAA because it comports with the intention of Congress and because it produces the most logical results.

When it passed the CSLAA, Congress vested exclusive authority to hear cases arising under it to the federal district courts. *See* 51 U.S.C. § 50914(g). The CSLAA, however, says nothing about venue—i.e., *which* federal district court should hear a given claim arising out of the CSLAA. This could be viewed as an oversight; alternatively, this could be viewed the manifestation of Congressional belief that the venue scheme it had enacted was up to the task for torts arising out of outer space conduct. Indeed, "the venue statutes reflect Congress' intent that venue should always lie in *some* federal court…'Congress does not in general intend to create venue gaps, which take away with one hand what Congress has given by way of jurisdictional grant with the other.'" *Atl. Marine Const. Co., Inc. v. U.S. Dist. Court for W. Dist. Of Tex.*, 571 U.S. 49, 56-57 (2013). By this logic, Congress *must* have intended the general venue statutes to apply to claims arising out of the CSLAA, because otherwise they granted jurisdiction in the federal district courts with no corresponding proper venue.

Thus, a tort that occurs in outer space, for which the federal district courts have jurisdiction under the CSLAA, must have a proper venue determined by the

other venue statutes. The most obvious venue statute is the best fit: 28 U.S.C. § 1391(b)(2), which provides venue in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." It is an "obvious truism" that "the navigable airspace above [a] district is a part of the district." R. at 28a; *United States v. Barnard*, 490 F.2d 907, 911 (9th Cir. 1973). As spacefaring technology improves, the size of that navigable airspace will grow. It is appropriate in this case to extend the principle of overflight venue to objects in Earth orbit, like DS-1 and the Falcon. It may be true that the principle of overflight venue cannot extend indefinitely. Judge Walt pointed out that, for a tort that occurs on Mars, an entire hemisphere of the Earth may be "below" when the tort occurs. R. at 72a. This case, however, does not arise out of conduct on Mars—all the ships were in orbit around Earth when the tort occurred. While it may be next to impossible to determine with certainty which exact district a given spot on Mars is "over" at a given time, that logic does not hold for objects in Earth orbit. Objects in Earth orbit are necessarily falling toward the Earth (at extremely high speed), meaning they are over a precise and determinable point on the Earth at *every moment* while they are in orbit. It may not be appropriate to extend the concept of overflight venue to torts occurring between ships beyond Earth orbit,[7] but we are not faced with such a case here.

[7] It seems appropriate to note, though, that ships with the capability to travel beyond Earth orbit would have advanced navigational capabilities; given a specific time, the navigational computer should be able to pinpoint an exact location in space, which can be translated into a point over the Earth. This assumes that the navigational computer is not damaged in the transaction that gives rise to the claim, as Solo's computer was. R. at 21a.

Thus, 28 U.S.C. § 1391 is the appropriate and proper venue statute for this tort that occurred in outer space, effectuating Congressional intent with the passage of the CSLAA.

B. Placing the burden of proof for venue disputes on the movant is aligned with the purpose of the venue statute because it promotes efficient and convenient litigation.

Prior to the 1990 amendments to 28 U.S.C. § 1391, venue was appropriate only in the district "in which the claim arose;" this resulted in "wasteful litigation" to determine the one correct venue, especially where multiple fora were involved in the dispute. *Cottman Transmission Systems, Inc. v. Martino*, 36 F.3d 291, 294 (3d Cir. 1994). Now, the statute provides venue in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(b)(2). The prior version contemplated venue being appropriate in only one forum, whereas the current version acknowledges that many fora can be involved in the transactions that give rise to a dispute. *Cottman*, 36 F.3d at 294. Venue is not, however, appropriate in any forum where some event related to the dispute occurred; the substantiality requirement "favors the defendant in a venue dispute." *Id.* As will be discussed below, the defendant is the party in the best position to protect its interests and enforce the substantiality requirement.

Where neither party presents competent evidence on the question of venue, the pertinent question is who bears the burden of proof. Several circuits place this burden on the plaintiff, arguing that venue is comparable to subject-matter and personal jurisdiction, where the plaintiff bears the burden of proof. *See In re ZTE (USA) Inc.*,

890 F.3d 1008, 1013 (Fed. Cir. 2018) (allocating the burden to plaintiff in a patent case under the patent venue statute); *Gulf Ins. Co.*, 417 F.3d at 355-356 (adopting the same standard of review for venue as for personal jurisdiction and allocating the burden of proof to the plaintiff to present a prima facie case of venue); *Mitrano*, 377 F.3d at 405 (same); *Delong Equip. Co. v. Wash. Mills Abrasive Co.*, 840 F.2d 843, 845 (11th Cir. 1988) (same); *Cordis Corp. v. Cardiac Pacemakers*, 599 F.2d 1085, 1086 (1st Cir. 1979) (collecting cases to note "ample authority placing the burden" on the plaintiff in the case of a motion to dismiss for improper venue); *Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 495-496 (9th Cir. 1979) (placing the burden on plaintiff in the context of the co-conspirator theory of venue, which the court rejected).

The Courts of Appeals for the Third and Eighth Circuits properly place the burden of proof on the defendant challenging venue. *See Myers v. Am. Dental Ass'n*, 695 F.2d 716, 724 (3d Cir. 1982) (arguing that venue is an "affirmative defense" and that cases that place the burden on the plaintiff "confuse jurisdiction with venue or offer no reasons to support their position"); *U.S. v. Orshek*, 164 F.2d 741, 742 (8th Cir. 1947) (arguing that the movant bears the burden of proof). The other circuit courts of appeals have not definitively ruled on the issue.[8] The better argument places the

[8] The Court of Appeals for the Seventh Circuit "has come down on both sides of this issue." R. at 23a. *See Matter of Peachtree Lane Assocs., Ltd.*, 150 F.3d 788, 792 (7th Cir. 1998) (placing the burden on the party challenging venue in a Chapter 11 bankruptcy case); *but see Grantham v. Challenge-Cook Bros., Inc.*, 420 F.2d 1182, 1184 (7th Cir. 1969) ("Plaintiff has the burden of establishing proper venue" in a patent infringement action). "[T]he Seventh Circuit has not resolved the tension between these two cases or even acknowledged the tension…'one panel of a circuit court cannot overrule another panel,' at least in the absence of an intervening statute or Supreme Court decision." *Niazi v. St. Jude Med. S.C., Inc.*, No 17-cv-183-jdp, 2017 WL 5159784, at *2 (W.D. Wis. Nov. 7, 2017) (quoting 18 James Wm. Moore, *Moore's Federal Practice* § 134.02[1][c] (3d ed. 2016)).

burden of proof on the movant in the case of a venue dispute because venue is distinguishable from jurisdictional requirements, and placing the burden on the movant better aligns with the purposes of the venue statutes.

1. While venue may be compared to subject-matter- and personal-jurisdictional requirements, it is distinct from those because it is purely statutory and does not implicate the Constitution.

It is worth comparing venue to subject-matter jurisdiction and personal jurisdiction as an illustrative. Subject-matter jurisdiction and personal jurisdiction are also defenses that may be raised under a Federal Rules of Civil Procedure Rule 12(b) motion (12(b)(1) and 12(b)(2), respectively).

Subject-matter jurisdiction is a court's authority to hear a case. *Home Depot U. S. A., Inc. v. Jackson*, 587 U.S. 435, 437 (2019). Article III, § 1 of the Constitution confirms that Congress must establish federal courts and thus determine the contours of their power, subject to the limitations in Article III, § 2. *Id.*; U.S. Const. Art. III. Any party may challenge subject-matter jurisdiction "'at any point in the litigation,' and courts must consider [challenges to subject-matter jurisdiction] *sua sponte*." *Fort Bend Cnty., Tex. v. Davis*, 587 U.S. 541, 548 (2019); *see* Fed. R. Civ. P. 12(h)(3). Lack of subject-matter jurisdiction is not waivable by any party, including the court: "No party can waive the defect, or consent to jurisdiction. No court can ignore the defect." *Wisconsin Dept. of Corrections v. Schacht*, 524 U.S. 381, 382 (1998). Because the presumption is "that a cause lies outside [the court's] limited jurisdiction...the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994).

Thus, the proponent of jurisdiction, and generally an adverse party to the movant (if a party moves to dismiss under Rule 12(b)(1)) bears the burden of proof for subject-matter jurisdiction.

Personal jurisdiction is, in general, the authority of the court to exercise judicial power over a party. *International Shoe Co. v. State of Wash., Office of Unemployment Compensation and Placement et al.*, 326 U.S. 310, 316 (1945). The exercise of personal jurisdiction must comport with due process "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.* (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)); *see* U.S. Const. Amend. V. Unlike subject-matter jurisdiction, lack of personal jurisdiction is a defense that is waived if not properly asserted. *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 704 (1982); *see* Fed. R. Civ. P. 12(h)(1). A party must assert lack of personal jurisdiction by motion before the responsive pleading (or within the responsive pleading), or they waive the defense entirely. Fed. R. Civ. P. 12(g)(2), 12(h)(1)(B)(ii). A party may also consent or stipulate to personal jurisdiction, either by not asserting the defense or through a forum selection clause of some kind. *Preferred Capital, Inc. v. Associates in Urology*, 453 F.3d 718, 721 (6th Cir. 2006).

The burden of proof for personal jurisdiction is not static—the plaintiff, asserting that the court has personal jurisdiction over the defendant, must make a prima facie case of personal jurisdiction. *Briskin v. Shopify, Inc.*, 135 F.4th 739, 750-751 (9th Cir. 2025) (analyzing the prima facie case for specific personal jurisdiction over a non-resident corporation in California). "If [the plaintiff] succeeds, then the burden shifts

to [the defendant] to 'present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.'" *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985)); *cf. Malone v. Stanley Black & Decker, Inc.*, 965 F.3d 499, 504 (6th Cir. 2020) (the plaintiff must first make a prima facie case of personal jurisdiction, which the defendant must rebut "with evidence," after which the burden shifts back to the plaintiff). Thus, if the challenge to personal jurisdiction is on fairness or Constitutional grounds, and the plaintiff has demonstrated that the "defendant purposefully established minimum contacts" with the forum State, the defendant must prove their case. *Burger King*, 471 U.S. at 476-477.

Compare these to venue. Venue is entirely statutory, as opposed to implicating the protections of the Constitution. *Atl. Marine Const. Co.*, 571 U.S. at 55 ("Whether venue is 'wrong' or 'improper' depends exclusively on whether the court in which the case was brought satisfies the requirements of federal venue laws"). And even though personal jurisdiction is partially Constitutional, those Constitutional concerns should be, according to *Burger King*, be asserted by the defendant resisting personal jurisdiction if the facts support personal jurisdiction. *Id.*; *see also* 5B *Wright & Miller's Federal Practice & Procedure* § 1351 (4th ed. 2025) (*Wright & Miller*) ("the Supreme Court has intimated that in the case of a challenge to the constitutional fairness and reasonableness of the chosen forum, the burden is on the defendant."). Placing the initial burden on the plaintiff asserting the court's personal jurisdiction over a defendant makes sense precisely because of the Constitutional concerns—it serves as

a prophylactic protection for the defendant's due process rights. Once the plaintiff shows the basic case for personal jurisdiction, then the burden properly shifts back to the defendant, who is in the best position of any party to safeguard its Constitutional rights.

Subject-matter jurisdiction is a different beast entirely; it concerns the court's baseline Constitutional authority, even ability, to hear a case. We live in a Constitutional system, where the Constitution is the "supreme Law of the Land."[9] U.S. Const. Art. VI. It makes sense that the proponent of an authority that must be conferred by the Constitution and by statute together should bear the burden of proving it. This differs from venue, which is purely statutory and primarily "for the convenience of parties and witnesses" and "the interest of justice." 28 U.S.C. §§ 1404(a), 1406(a).

Once the plaintiff has established that the court has authority to hear the case and judicial power over the parties in the case, the burden should shift to the defendant for less important matters of convenience. This comports with the goal of the 1990 amendments to the venue statutes to avoid "wasteful litigation" on the topic of which forum is most convenient once it is determined that the court has Constitutional and statutory authority to hear the case and judicial power over the defendant. *Cottman*, 36 F.3d at 294. If the court that the plaintiff has chosen may hear the case and has judicial power over the defendant, second-guessing that

[9] Obviously, the Supremacy Clause of Article VI of the Constitution has broad application as to preemption of state law, among other things; this usage of the phrase "supreme Law of the Land" is metaphorical, reflecting the paramount importance that the Constitution holds in our legal order.

decision should come at the behest of the defendant and at their burden; the defendant will then weigh whether a more convenient forum is worth seeking a venue transfer when they have to prove that the venue the plaintiff chose is improper.

2. The doctrine of forum non conveniens is a better analogy to venue because it aligns with the purpose of venue and produces fairer results for plaintiffs and defendants.

The doctrine of forum non conveniens provides a closer analogy to venue, and, if its lessons are applied, result in keeping with the aims of the venue statutes and their 1990 amendments. Forum non conveniens applies when the "superior alternative forum is in a different judicial system," under a separate sovereign, and it results in a dismissal rather than a transfer to a different forum. 14D *Wright & Miller* § 3828 (4th ed. 2025). "[T]he doctrine is invoked sparingly" and is only appropriate when: (1) "an adequate alternative forum is available," (2) a balancing of the "relevant interests" weighs heavily in favor of dismissal, and (3) the court has determined the degree of deference afforded to the plaintiff's choice of forum. *Id.* Importantly, "[f]ederal courts unanimously conclude that the defendant bears the burden of persuasion on all elements of the forum non conveniens analysis." 14D *Wright & Miller* § 3828.2 (4th ed. 2025). "[T]here is ordinarily a strong presumption in favor of the plaintiff's choice of forum, which may be overcome only when the private and public interest factors clearly point towards trial in the alternative forum." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255 (1981). "[A] foreign plaintiff's choice deserves less deference" because the foreign plaintiff has necessarily chosen a non-home forum and is thus not motivated by the convenience of the forum. *Id.* At 255-256. The

"central purpose" of the doctrine of forum non conveniens is, fittingly, convenience, so a forum decision motivated by anything other than convenience is due less deference. *Id.*

The doctrine of forum non conveniens mirrors the concerns of the venue statutes: convenience and access to justice. Neither venue nor forum non conveniens implicate Constitutional concerns, as opposed to subject-matter jurisdiction and personal jurisdiction; with subject-matter and personal jurisdiction, the convenience of the parties does not enter into the equation precisely because of the Constitutional concerns. Venue does not implicate the court's authority to hear a case, only where the case is best situated in light of convenience and justice. Especially where, as here, there is no jurisdictional concern, the plaintiff's choice of venue should be afforded deference. The best way to afford that deference and ensure that convenience and justice are balanced is to place the burden of proof in a venue dispute on the moving party. If the totality of the circumstances warrants a change in venue or a dismissal, the moving party is the best party to demonstrate that fact, and allocating the burden of proof to the movant helps achieve the goal of preventing the "wasteful litigation" the 1990 amendments to the venue statutes sought to prevent. *Cottman*, 36 F.3d at 294. Once the plaintiff establishes the court's jurisdiction, both subject-matter and personal, issues of which forum is proper from an efficiency and convenience standpoint, balancing justice, should be allocated to the party challenging the forum.

This Court should, for the reasons stated above, AFFIRM the District Court for the District of Alderaan and the Court of Appeals for the Sixteenth Circuit in holding

that the burden of proof for a Rule 12(b)(3) motion to dismiss is properly allocated to the defendant/movant.

II. THE CORRECT STANDARD OF CAUSATION UNDER THE COMMERCIAL SPACE LAUNCH ACTIVITIES ACT'S INDEMNIFICATION SCHEME IS BUT-FOR CAUSATION BECAUSE THAT COMPORTS WITH THE INTENTION OF CONGRESS AND IS MORE JUST.

This is as much of an issue of first impression as it could be—there have been no lawsuits brought under the CSLAA as of this writing. R. at 4a. There has been one case ever that has interpreted any provision of the CSLAA, and the relevant provision was amended the year after the decision. Justin Silver, *Houston, We Have a (Liability) Problem*, 112 Mich. L. Rev. 833, 848 n. 100 (2014); *see Martin Marietta Corp. v. International Telecommunications Satellite Org.*, 991 F.2d 94, 100 (4th Cir. 1992) (holding that the CSLAA as constituted in 1992 prohibited waivers for gross liability). As such, this Court has a special interest in charting a logical course that will stand the test of time, providing competent guidance to courts in the future. Applying the CSLAA to Solo's damages claim and reading it to impose a but-for causation standard fulfils the aims of justice and is the textually correct way to interpret the statute.

A. The CSLAA applies to this case because the destruction of DS-1 was the result of an activity carried out under a license granted under the CSLAA.

The threshold question, whether the CSLAA applies to this case at all, is an easy one to answer, despite Petitioners' arguments to the contrary. 51 U.S.C. § 50915(a)(1) provides that:

> [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 or transferred under this chapter for death, bodily injury, or property damage or loss resulting from an activity carried out under the license.

The operative language here is "resulting from an activity carried out under the license." 51 U.S.C. § 50915(a)(1). Elsewhere in the CSLAA, Congress chose to use more specific language: for example, a license is required "to launch a launch vehicle or to operate a launch site or reentry site, or to reenter a reentry vehicle." *Id.* § 50904(a)(1). The fact that Congress used the broad language they did ("resulting from an activity carried out under the license") in the indemnification scheme indicates their desire for the indemnification scheme to have broad application. *Id.* § 50915(a)(1).

Operating DS-1 in Earth Orbit is an activity carried out under a license (or, in this case, under many licenses). As previously stated, the Empire complied with all of its requirements under the CSLAA, meaning they applied for and received a license for each of the hundreds of launches they conducted. R. at 11a. That means that each piece of DS-1 was the payload of a launch carried out under the CSLAA—the pieces were manufactured on Earth and launched into orbit to be assembled there. R. at 8a. If operating a station that was the direct result of many licensed launches is not an activity carried out under the license, it is hard to see what kinds of activities would be included beyond the actual launches and reentries themselves; if Congress intended the statute to be so restrictive, it would have used those precise terms instead of the broad "activity carried out under the license." *Id.*

B. Reading the CSLAA's indemnification scheme as requiring but-for causation is supported by the text of the statute, as well as its history, and proves to be the best interpretation in order to effectuate the plain language of the statute.

The Empire and the United States argue that an injured party cannot recover under 51 U.S.C. § 50915 unless the injuries were proximately caused by the licensed activity. The district court applied the substantive law of the state of Alderaan to Solo's negligent product design claims except for the issue of causation. R. at 37a; *see* 28 U.S.C. § 1652. For those, the district court correctly applied a but-for causation standard supported by a careful reading of the CSLAA itself. R. at 37a.

Alderaanian state law on tort liability for negligent product design is "fairly typical." R. at 37a. To succeed on a claim for negligent product design, a plaintiff must prove (among other things)[10] that the damages were caused by the negligent product design; causation is most often broken down into two requirements: cause-in-fact and legal cause. *Hakim v. Safariland, LLC*, 79 F.4th 861, 872 (7th Cir. 2023) (applying Illinois law); *see also Burrage v. United States*, 571 U.S. 204, 210 (2014) ("The law has long considered causation a hybrid concept, consisting of two constituent parts: actual cause and legal cause."). Cause-in-fact denotes that "the conduct 'was a material element and a substantial factor in bringing about the injury.'" *Hakim*, 79 F.4th at 872 (quoting *Lee v. Chi. Transit Auth.*, 605 N.E.2d 493, 502 (Ill. 1992)). "This standard requires the plaintiff to show 'that the harm would not have occurred' in the absence of—that is, but for—the defendant's conduct." *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 346-347 (2013) (quoting Restatement of Torts § 431, cmt. a (A.L.I.

[10] The other elements of a claim for negligent product design are not at issue in this appeal.

1934)). Accordingly, courts refer to this as "but-for" causation. *See, e.g., Burrage*, 571 U.S. at 211 ("This but-for requirement is part of the common understanding of cause.").

It cannot properly be disputed that the Empire's negligent design of DS-1 is the but-for cause of Solo's injuries and the damage to the Falcon. The Empire designed the space station with the critical flaw that rendered it vulnerable to a precise hit with a proton torpedo, and that flaw was exploited, destroying DS-1. R. at 13a. The station burst into innumerable fragments which were violently propelled by the force of the explosion; some of these collided with the Falcon, causing property damage and personal injury to Solo. If DS-1 had not been designed negligently, then Solo's damages would not have occurred. The Empire's poor design was clearly a "material element and a substantial factor" in bringing about Solo's damages claim. *Hakim*, 79 F.4th at 872. Of course, Skywalker's conduct was also a material element and substantial factor to Solo's injuries, but there is no prohibition on having multiple tortfeasors' conduct as but-for causes of an injury. *See Callahan v. Cardinal Glennon Hosp.*, 863 S.W.2d 852, 862 (Mo. 1993) (en banc) (allowing the application of the but-for "causation test to a circumstance involving multiple causes," when those causes are not of the "two fires" type[11]). The jury was asked whether they found by a

[11] Though there were two negligent actors who committed different acts of negligence here, this is not a "two fires" case. The classic example of a "two fires" case is the "law-school example…where two independent tortfeasors set fires on opposite sides of the mountain, the fires burn toward the cabin at the top, and either is sufficient to destroy the cabin." *Callahan*, 863 S.W.2d at 861. In this hypothetical, the "absence of either fire will not save the cabin," so rigidly applying a but-for causation standard "fails." *Id.* Here, Skywalker's negligent act alone (firing a proton torpedo) did not and could not have caused Solo's damages. Even firing a proton torpedo at DS-1, if it did not have the critical design flaw, would have only resulted in damage to DS-1. It was the combination of Galen Walton Erso's negligent design *and* Skywalker's negligent firing of a proton torpedo at the

preponderance of the evidence that the Empire's "negligence, if any,…in designing the DS-1 was a cause in fact of the explosion?" R. at 40a. The question included this instruction, which mirrors this discussion of but-for causation: "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." R. at 40a. The jury returned the only answer supported by the evidence—yes. R. at 40a.

The question, then, became whether the United States would be responsible for paying for Solo's damages under 51 U.S.C. § 50915. The statute provides that the United States will pay for the damages of a "successful claim" "resulting from" a licensed activity. The district court correctly interpreted "resulting from" as implying but-for causation, not proximate cause, and that reading is supported by the statute itself, case law, and the history and policy behind the CSLAA.

1. The text of the CSLAA unambiguously supports indemnification for cases that do not apply state law, and thus do not apply proximate cause, to the issue of causation.

The text of the CSLAA supports a reading of the causation standard as but-for causation. Specifically, the statute provides that the United States will indemnify a licensee for injuries or damage caused by "any activity carried out under the license," so long as it is a "successful claim." 51 U.S.C. §50915(a)(1). The term "successful claim" is modified with the parenthetical "including reasonable litigation or

small thermal exhaust port that caused Solo's injuries. In other words, Skywalker's actions, without the negligence of the Empire, would not have caused Solo's injuries—and thus, this is clearly not a "two fires" case.

settlement expenses." *Id.* This evinces the intention that the United States would not necessarily pay only for damages that were litigated to a final judgment; it also contemplates cases that settle. Presumably, then, a "successful claim" includes any claim that results in a recovery for the injured party/potential plaintiff for injuries "*resulting from* an activity carried out under the license." *Id.* (emphasis added). If the term "successful claim" contemplates settlements as well as claims litigated to a final judgment, it stands to reason that the causal nexus between such a settlement and the licensed activity need not be litigated according to the state law standard.

If an injured party/potential plaintiff needed to litigate the issue of whether damages "result[ed] from" a licensed activity for the United States to pay the claim, it would defeat the purpose of the statute authorizing indemnification for settlement expenses. But-for causation is a standard of causation that does not need to be litigated to be effectively reviewed by the Secretary of Transportation. Proximate causation is most often decided by the finder of fact. *See Palma v. BP Products North America, Inc.*, 594 F.Supp.2d 1306, 1309-1310 (S.D. Fla. 2009) (applying Florida law; discussing foreseeability being left to the factfinder to resolve unless the facts are uncontroverted or the evidence supports "no more than a single reasonable inference"). It holds, then, if there is no finder of fact, no determination of proximate cause can be made. But-for causation does not require a judicial process to review effectively as, as discussed above, only a clearly established causal connection between the licensed activity and the injury would be required.

It would offend the surplusage canon, otherwise known as *verba cum effectu sunt accipienda* ("words are to be taken as having an effect"), to ignore the text in the statute supporting payments when there has been a settlement instead of a judicial resolution of a case. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 174-179 (1st ed. 2012). The surplusage canon holds that every provision in a statute must be given effect. *Id.* "These words cannot be meaningless, else they would not have been used." *Id.* (quoting *U.S. v. Butler*, 297 U.S. 1, 65 (1936)). If the reading of "resulting from" rested upon the premise of a "successful claim" *under state law*, it would render the explicit modification of "successful claim" (including "settlement expenses") entirely meaningless. Such a reading would require a judicial determination of causation for the injured party to recover in contravention of the clear statutory language permitting recovery in the absence of a judicial resolution.

Thus, the text of the statute itself supports a reading of "resulting from" as implying but-for causation.

2. The phrase "resulting from" ordinarily denotes but-for causation, so Congress would have legislated with that ordinary meaning as their goal.

Courts, including this Court, routinely interpret the phrase "resulting from" as denoting but-for causation, following the ordinary meaning canon of statutory interpretation. *See* Scalia & Garner, *supra*, 69-77; *see also Burrage*, 571 U.S. at 210-214. The ordinary meaning canon is "the most fundamental semantic rule of interpretation." Scalia & Garner, *supra*, 69. It holds that "[o]ne should assume the

contextually appropriate ordinary meaning unless there is reason to think otherwise." *Id.* at 70. Defining a term is the most common way to give it a meaning other than its ordinary meaning; the CSLAA "does not define the phrase 'result[ing] from,' so we give it its ordinary meaning." *Burrage*, 571 U.S. at 210. "A thing 'results' when it 'arises as an effect, issue, or outcome *from* some action, process or design;'" this "imposes...a requirement of actual causality." *Id.* at 210-211 (quoting 2 The New Shorter Oxford English Dictionary 2570 (1993)). This ordinary meaning imposes only but-for causation (much like other similar phrases such as "because of" and "based on"). *Id.* at 213-214 (collecting cases).

There is no reason to read a higher, more technical definition of causation (namely, proximate cause) into the CSLAA in the absence of express Congressional intent, manifested in the text of the statute or its context. *U.S. v. Regeneron Pharmaceuticals, Inc.*, 128 F.4th 324, 329 (1st Cir. 2025). "Textual" indications are those present in the "statutory language at issue." *Id.* There is no indication in the text of the CSLAA to indicate a different causation standard than the "ordinary course…form of but-for causation." *Id.* at 330. A "contextual" indication also arises from the text—the "substance or structure of the statutory scheme as a whole." *Id.* The context of the CSLAA's statutory indemnification scheme indicates, as will be discussed in the next section, but-for causation as both the best causation standard for the aims of the statutory scheme and no indication of contrary Congressional intent.

3. The history and policy behind the statute support a but-for causation standard because it best effectuates the aims of the statute.

The CSLAA places a burden on the Secretary of Transportation to "carry out this chapter consistent with an obligation the United States Government assumes in a treaty, convention, or agreement in force between the Government and the government of a foreign country." 51 U.S.C. § 50919(e)(1). The United States is party to three relevant non-self-executing[12] treaties: the "Liability Convention," the "Registration Convention," and the "Outer Space Treaty." *See Fund for Animals, Inc. v. Kempthorne*, 472 F.3d 872, 879 (D.C. Cir. 2006) (Kavanaugh, J., concurring) (discussing self-executing and non-self-executing treaties).

The Liability Convention, or the "Convention on International Liability for Damage Caused by Space Objects," provides that:

> In the event of damage being caused elsewhere than on the surface of the earth to a space object of one launching State or to persons or property on board such a space object by a space object of another launching State, the latter shall be liable only if the damage is due to its fault or the fault of persons for whom it is responsible.

[12] A self-executing treaty becomes law as soon as it is signed and can be identified by language that does not address itself to the political branches of government, such as by not talking about taking future action. *Fund for Animals*, 472 F.3d at 879. In contrast, a non-self-executing treaty "addresses itself to the political…department; and the legislature must execute the contract before it can become a rule for the Court." *Id.* (quoting *Foster v. Neilson*, 27 U.S. 235, 314 (1829)). Justice Kavanaugh argued in his concurrence in *Fund for Animals* that statutes should not be interpreted with reference to non-self-executing treaties; "because non-self-executing treaties have no legal status in American courts, there seems to be little justification for a court to put a thumb on the scale in favor of a non-self-executing treaty when interpreting a statute." *Id.* at 880. He reasoned that the Legislative and Executive Branches may have had reasons to not implement provisions of a non-self-executing treaty (or to contradict it entirely), and it is not for the judicial branch to "bring[] the non-self-executing treaty into domestic law through the back door." *Id.* This argument is has merit in a different case—here, however, we have clear Congressional intent, in the very text of the statute, that the statute should be "carr[ied] out…consistent with an obligation the United States Government assumes in a treaty, convention, or agreement in force." 51 U.S.C. § 50919(e)(1). Where this intent is so explicit, we should follow the Congressional direction in interpreting the CSLAA.

24 U.S.T. 2389 Art. III (1973). In other words, a launching State is liable for damage to another launching State's space object only when "fault" is established. The term "fault" is not defined in the Liability Convention. R. at 50a. Congress decided to put its own definition of "fault" in the final version of the CSLAA when it included the phrase "resulting from:" a phrase which, as previously discussed, implies but-for causation under the most natural reading.

Under the Registration Convention, or the "Convention on Registration of Objects Launched into Outer Space," the United States agreed that "[w]hen a space object is launched into earth orbit or beyond, the launching State shall register the space object by means of an entry in an appropriate registry which it shall maintain." 28 U.S.T. 695 Art. II (1975). The CSLAA's licensure requirement fulfills this obligation. *See* Manal Cheema, *Ubers of Space: United States Liability Over Unauthorized Satellites*, 44 J. Space L. 171, 173 (2020) ("licensing is a critical aspect of ensuring the US' satisfaction of its international treaty obligations"). The Outer Space Treaty, or the "Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies," mandates that "the common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes." 18 U.S.T. 2410 (1967). States are also made responsible for the actions of "non-governmental entities" who conduct "national activities in outer space." *Id.* Art. VI.

These treaties, when read together, evince an international obligation of State responsibility for the space objects that originate in a State. States should, to the

greatest extent possible, use space for peaceful purposes and for the "freedom of scientific investigation." *Id.* The aims, then, that Congress funneled into the creation of the CSLAA, were "international co-operation and understanding" and accountability for the objects launched into space by the United States or a citizen thereof. *Id.* That aim is clear from the CSLAA's requirement that an American citizen register for and obtain a license before any space activity no matter where they are in the world when they launch. 51 U.S.C. § 50904(a). Congress intended, by enacting the CSLAA, to hold the government to account for the objects it launches or permits to be launched into space to be a good international citizen and fulfil its treaty obligations.

Reading the phrase "resulting from" as requiring but-for causation advances that goal. But-for causation results in the United States compensating the victims of space-based negligence in greater amounts, because it is likely that more plaintiffs would be able to establish but-for causation than proximate cause. It would also be a consistent, easy-to-apply, and uniform standard across the States, as opposed to each jurisdiction's law on what constitutes a "successful claim" needing to be consulted.

But-for causation is the correct standard of causation for the CSLAA's indemnification scheme, supported by the text of the statute itself, case law, the ordinary meaning canon of statutory construction, and the United States' relevant international obligations. This Court should AFFIRM the judgment of the Court of Appeals for the Sixteenth Circuit and the District Court for the District of Alderaan

and hold that the causation standard found in the CSLAA is a uniform but-for standard.

C. Even if the statute requires proximate cause, the destruction of DS-1 by a rogue agent was foreseeable under the circumstances, meeting the proximate cause standard.

Though the district court and the court of appeals did not rely on a finding of proximate cause in their judgments, the record amply supports such a finding. Even if the CSLAA incorporates state law standards of proximate cause in order for a party to recover, Solo can meet that burden based on the uncontroverted facts in the record, and thus, this court should AFFIRM the judgment of the district court and the court of appeals.

This Court may affirm a lower court for any reason supported by the record under the "right for any reason" rule. *U.S. v. American Ry. Exp. Co.*, 265 U.S. 425, 435 (1924) ("But it is likewise settled that the appellee may, without taking a cross-appeal, urge in support of a decree any matter appearing in the record, although his argument may involve an attack upon the reasoning of the lower court or an insistence upon matter overlooked or ignored by it."); *see generally* Jeffrey M. Anderson, *Right For Any Reason*, 44 Cardozo L. Rev. 1015 (2023) (arguing that the "right for any reason" rule should be discretionary rather than mandatory in federal appellate courts). This rule is desirable in federal courts because it results in more efficient litigation: If a judgment is correct, but for the wrong reason, the appellate court may affirm the judgment instead of reversing and remanding for more litigation where the same party will prevail. This is the case here. Instead of reversing and

remanding for a new trial on the issue of proximate cause, where Solo will win because the uncontroverted facts support a finding of proximate cause (and so the jury answered), this Court may find that proximate cause is established as a matter of law by the record and affirm, saving the taxpayers' money and helping the courts function more efficiently by reducing their caseload.

A brief explanation of proximate cause is in order. In contrast to the simplicity of but-for causation, "[p]roximate cause is a bedeviling concept in tort law, and a 'firm definition for the term…has escaped judges, lawyers, and legal scholars for centuries.'" *Colon v. Twitter, Inc.*, 14 F.4th 1213, 1223 (11th Cir. 2021) (quoting *Kemper v. Deutsche Bank*, 911 F.3d 383, 392 (7th Cir. 2018)). Jurisdictions vary on the formulation of proximate cause. *Id.* Nevertheless, proximate cause is most often described as "a question of foreseeability…[i]t exists so long as the plaintiff's injury was a reasonably foreseeable result of the defendant's conduct." *Hakim*, 79 F.4th at 872). The doctrine of "superseding cause" is part of a proximate cause analysis: When an "unforeseeable intervening act" injures the plaintiff (rather than "a risk created by the defendant"), the defendant incurs no liability despite their negligence. *Hunter v. Mueske*, 73 F.4th 561, 568 (7th Cir. 2023).

The Empire would argue that a rogue Tunisian farmer, acting without the support of any government and qualified only by his target-shooting abilities, managing to exploit DS-1's fatal vulnerability was a superseding cause of Solo's injuries. The flaw in that argument is this: though Skywalker was an unlikely candidate for a party to precisely hit the point where DS-1 would shatter, it was

reasonably foreseeable that *someone* would take advantage of the vulnerability. Judge Windu argued correctly in his concurrence that the Empire should have foreseen that someone with the ability to take advantage of the "Death Star's" (for so was it called by its detractors, citing concerns about its advanced weapons capabilities) shatter-point once it was discovered. R. at 66a. In fact, the record even demonstrates that the Empire was worried about *exactly that*: The Empire tried to suppress the dissemination of knowledge of DS-1's vulnerability as soon as they found out about it (8-10 days before DS-1 was destroyed), because it was reasonably foreseeable that someone with "the means and desire to take advantage of the design flaw" would do so. R. at 13a.

The Empire argues that the record, far from supporting proximate cause as a matter of law, more accurately supports a finding that Skywalker's actions constituted a superseding cause as a matter of law. Judge Walt echoed that argument in the dissent at the court of appeals, arguing that crux of 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 destroy DS-1. R. at 69a. This argument does not hold water. Though Skywalker would surely object to being called an "unbalanced space pirate," whether *Skywalker* would have the capabilities to launch an attack on DS-1 is not the operative question in the foreseeability analysis. The operative question is whether *someone* would have the capabilities to launch an attack on DS-1, and it was reasonably foreseeable that *someone* would. Numerous nations protested the construction of DS-1, and it is

foreseeable that one of them may have the financial capability to launch a small ship into Earth orbit. R. at 62a.

From a certain point of view, it was only a matter of time before someone piloted an X-wing into orbit and made the precise shot that would destroy DS-1, especially as the information about DS-1's vulnerability disseminated further. It took *less than two weeks* from the discovery of the design flaw for someone to destroy DS-1. That speaks to how foreseeable it was that someone would launch an attack on the space station—sentiment about the station was so negative that its detractors mobilized immediately once a way to rid the Earth of the station became known. The longer the information was available, and the more widely available it became, the more likely it would have become that someone would attempt to destroy the so-called "Death Star."

A comparison to a terrorism case is apt: In *Port Authority of New York and New Jersey v. Arcadian Corp.*, the owner of the World Trade Center sued the manufacturers of the fertilizer products that terrorists used to craft a bomb that killed six people in 1993. 189 F.3d 305, 309 (1999). The plaintiff alleged foreseeability based on two prior terrorist attacks that used the same chemicals (but not the same manufacturer's products) to craft bombs. *Id.* The Court of Appeals for the Third Circuit decided the issue of proximate cause as a matter of law, concluding that the bombing was a "highly extraordinary consequence." *Id.* at 318. "[A] defendant is not held liable for every conceivable consequence that might somehow be causally related to its conduct." *Id.* In this case, however, the defendant's conduct is nowhere near as

attenuated from the outcome as the use of two separate fertilizer products to craft a bomb in a home laboratory. The Empire launched a space station with a hypermatter laser into Earth orbit, prompting "international outrage." R. at 3a. Among other concerns (like the station de-orbiting and causing destruction, or environmental groups' concerns that an object so large so close to the Earth would wreak havoc on the Earth's tidal system), detractors called the station the "Death Star," a telling name for a hypermatter laser array that, while having noble intentions (to destroy incoming space objects), could be used in much more sinister ways. R. at 60a. DS-1 would have been able to generate the propulsion necessary to stay in orbit; presumably, it could adjust its position and aim at incoming space objects. R. at 8a. If a terrorist group were to take control of the station, they could presumably fire the hypermatter laser array at whatever target they wished. This is not like the *Port Authority* case, where the defendants sold an ordinary household product that happened to contain chemicals that, when processed in a laboratory, could be used to craft a bomb; the Empire put a weapon of an unprecedented scale in Earth orbit and is surprised when groups seek to destroy it before someone else can take control of it. This would be closer to selling "craft-a-bomb" kits and claiming surprise when someone ended up hurt or dead. It is quite the miracle that no one died in DS-1's explosion. So, from these unchallenged facts, the record supports a finding of proximate cause as a matter of law.

Most often, however, proximate cause is a question for the jury. *Port Auth.*, 189 F.3d at 318. The jury found that Solo had established proximate cause when

"appropriately instructed" on the issues of foreseeability and superseding cause. R. at 35a, 78a. This Court has no reason to disturb the jury's finding if it determines that the requisite standard under the CSLAA is proximate cause. When there are "reasonable differences in opinion," issues like proximate cause are for the jury to decide. *Napier v. F/V DEESIE, Inc.*, 454 F.3d 61, 69 (1st Cir. 2006). On this record, a reasonable jury could find that the Empire's negligent design of DS-1 was a proximate cause of Solo's injuries because Skywalker's actions were reasonably foreseeable. At the very least, reasonable minds may differ, so the jury's determination that Solo had established proximate cause should be undisturbed.

The record here amply supports a finding of proximate cause as a matter of law. The jury also found that Solo had established proximate cause, and proximate cause is an issue best left to a reasonable jury—and here, the jury was more than reasonable in its finding. As such, this Court should AFFIRM the judgment of the Court of Appeals for the Sixteenth Circuit.

CONCLUSION

For the foregoing reasons, this Court should AFFIRM the judgment of the Court of Appeals for the Sixteenth Circuit and the District Court for the District of Alderaan.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT