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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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NGUYEN *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 01–10873. Argued March 24, 2003—Decided June 9, 2003*

Petitioners were tried, convicted, and sentenced on federal narcotics charges in the District Court of Guam, a territorial court with subject-matter jurisdiction over both federal-law and local-law causes. The Ninth Circuit panel convened to hear their appeals included two judges from that court, both of whom are life-tenured Article III judges, and the Chief Judge of the District Court for the Northern Mariana Islands, an Article IV territorial-court judge appointed by the President and confirmed by the Senate for a 10-year term. Neither petitioner objected to the panel's composition before the cases were submitted for decision, and neither sought rehearing to challenge the panel's authority to decide their appeals after it affirmed their convictions. However, each filed a certiorari petition claiming that the judgment is invalid because a non-Article III judge participated on the panel.

Held: The Ninth Circuit panel did not have the authority to decide petitioners' appeals. Pp. 4–14.

(a) In light of the relevant statutory provisions and historical usage, it is evident that Congress did not contemplate the judges of the District Court for the Northern Mariana Islands to be "district judges" within the meaning of 28 U. S. C. §292(a), which authorizes the assignment of "one or more district judges within [a] circuit" to sit on the court of appeals "whenever the business of that court so requires." As used throughout Title 28, "district court" means a " 'court of the United States' " "constituted by chapter five of this title." §451.

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*Together with No. 02–5034, *Phan* v. *United States,* also on certiorari to the same court.

Among other things, Chapter 5 creates a "United States District Court" for each judicial district, §132(a), exhaustively enumerates the districts so constituted, §133(a), and describes "district judges" as holding office "during good behavior," §134(a). Significantly, the District Court for the Northern Mariana Islands is not one of the enumerated courts, nor is it even mentioned in Chapter 5. See §133(a). Because that court's judges are appointed for a term of years and may be removed by the President for cause, they also do not satisfy §134(a)'s command for district judges to hold office during good behavior. Although the Chief Judge of the District Court for the Northern Mariana Islands is literally a "district judge" of a court "within the [Ninth] [C]ircuit," such a reading of §292(a) is so capacious that it would also justify the designation of "district judges" of any number of *state* courts "within" the Ninth Circuit. Moreover, historically, the term "United States District Court" in Title 28 has ordinarily excluded Article IV territorial courts, even when their jurisdiction is similar to that of an Article III United States District Court. *E.g., Mookini* v. *United States*, 303 U. S. 201, 205. Pp. 4–7.

(b) The Government's three grounds for leaving the judgments below undisturbed are not persuasive. First, this Court's precedents concerning alleged irregularities in the assignment of judges do not compel application here of the *de facto* officer doctrine, which confers validity upon acts performed by a person acting under the color of official title even though it is later discovered that the legality of that person's appointment to office is deficient, *Ryder* v. *United States*, 515 U. S. 177, 180. Typically, the Court has found a judge's actions to be valid *de facto* when there is a "merely technical" defect of statutory authority, *McDowell* v. *United States*, 159 U. S. 596, 601–602, but not when, as here, there has been a violation of a statutory provision that embodies weighty congressional policy concerning the proper organization of the federal courts, see, *e.g., American Constr. Co.* v. *Jacksonville, T. & K. W. R. Co.*, 148 U. S. 372, 387. Second, for essentially the same reasons, it is inappropriate to accept the Government's invitation to assess the merits of petitioners' convictions or whether the fairness, integrity, or public reputation of the proceedings were impaired by the composition of the panel. Third, the Government's argument that the presence of a quorum of two otherwise-qualified judges on the panel is sufficient to support the decision below is rejected for two reasons. The federal quorum statute, 28 U. S. C. §46(d), has been on the books (in relevant part essentially unchanged) for over a century, yet this Court has never doubted its power to vacate a judgment entered by an improperly constituted court of appeals, even when there was a quorum of judges competent to consider the appeal. See, *e.g., United States* v. *American-Foreign*

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S. S. Corp., 363 U. S. 685. Moreover, the statute authorizing courts of appeals to sit in panels, §46(b), requires the inclusion of at least three judges in the first instance. Although the two Article III judges who took part below would have constituted a quorum had the original panel been properly created, it is at least highly doubtful whether they had any authority to serve by themselves as a panel. Thus, it is appropriate to return these cases to the Ninth Circuit for fresh consideration by a properly constituted panel. Pp. 7–14.

284 F. 3d 1086, vacated and remanded.

STEVENS, J., delivered the opinion of the Court, in which O'CONNOR, KENNEDY, SOUTER, and THOMAS, JJ., joined. REHNQUIST, C. J., filed a dissenting opinion, in which SCALIA, GINSBURG, and BREYER, JJ., joined.