Judiciary, as the Supreme Court has explained, generally is not "competent to undertake" that sort of inquiry. *Id*. Indeed, "[f]ew subjects are less adapted to judicial review than the exercise by the Executive of his discretion in deciding when and whether to institute criminal proceedings, or what precise charge shall be made, or whether to dismiss a proceeding once brought." *Newman v. United States*, 382 F.2d 479, 480 (D.C. Cir. 1967). "Judicial supervision in this area" would also "entail[] systemic costs." *Wayte*, 470 U.S. at 608. It could "chill law enforcement," cause delay, and "impair the performance of a core executive constitutional function." *Armstrong*, 517 U.S. at 465 (quotation omitted). As a result, "the presumption of regularity" applies to "prosecutorial decisions and, in the absence of clear evidence to the contrary, courts presume that [prosecutors] have properly discharged their official duties." *Id*. at 464 (internal quotation marks, quotation, and alterations omitted).

B.

Those settled principles counsel against interpreting statutes and rules in a manner that would impinge on the Executive's constitutionally rooted primacy over criminal charging decisions. Of particular salience, Rule 48(a) of the Federal Rules of Criminal Procedure requires a prosecutor to obtain "leave of court" before dismissing charges against a criminal defendant. Fed. R. Crim. P. 48(a). That language could conceivably be read to allow for considerable judicial involvement in the determination to dismiss criminal charges. But decisions to dismiss pending criminal charges—no less than decisions to initiate charges and to identify which charges to bring—lie squarely within the ken of prosecutorial discretion. *See e.g.*, *Newman*, 382 F.2d at 480. To that end, the Supreme Court has declined to construe Rule 48(a)'s "leave of court" requirement to confer any substantial role for courts in the determination whether to dismiss charges.

Rather, the "principal object of the 'leave of court' requirement" has been understood to be a narrow one—"to protect a defendant against prosecutorial harassment . . . when the [g]overnment moves to dismiss an indictment over the defendant's objection." *Rinaldi v. United States*, 434 U.S. 22, 29 n.15 (1977). A court thus reviews the prosecution's motion under Rule 48(a) primarily to guard against the prospect that dismissal is part of a scheme of "prosecutorial harassment" of the defendant through repeated efforts to bring—and then dismiss—charges. *Id*.

So understood, the "leave of court" authority gives no power to a district court to deny a prosecutor's Rule 48(a) motion to dismiss charges based on a disagreement with the prosecution's exercise of charging authority. For instance, a court cannot deny leave of court because of a view that the defendant should stand trial notwithstanding the prosecution's desire to dismiss the charges, or a view that any remaining charges fail adequately to redress the gravity of the defendant's alleged conduct. *See In re United States*, 345 F.3d 450, 453 (7th Cir. 2003). The authority to make such determinations remains with the Executive.

The same considerations have informed our understanding of the respective roles of the Executive and the courts with regard to the acceptance of certain civil consent decrees proposed by enforcement agencies. A provision of the Antitrust Procedures and Penalties Act, known as the Tunney Act, calls for a district court to enter a proposed antitrust consent decree if "in the public interest." 15 U.S.C. § 16(e). In *United States v. Microsoft Corp.*, 56 F.3d 1448 (D.C. Cir. 1995), the Department of Justice filed a civil antitrust complaint against Microsoft, together with a proposed consent decree embodying the parties' settlement of the case. *Id.* at 1452. The district court denied approval of the consent decree based on a belief that the complaint and

decree were inadequate in scope to address Microsoft's objectionable conduct. *Id.* at 1452-55. The court concluded that the consent decree therefore failed to satisfy the statute's "public interest" standard.

We reversed the district court and remanded for entry of the proposed decree. The appellants argued that the district judge had understood his authority under the statute's "public interest" provision unduly expansively, so as to enable him to "bas[e] his rejection of the decree on considerations which implicate the executive branch's prosecutorial discretion." *Id.* at 1457. We agreed, explaining that the "public interest" standard did not "empower[]" the district judge to reject "the remedies sought" in the consent decree "merely because he believed other remedies were preferable." *Id.* at 1460. Moreover, we indicated that the district "court was barred from reaching beyond the complaint to examine practices the government did not challenge." *Id.* To be sure, a "district judge is not obliged to accept" a proposed decree "that, on its face and even after government explanation, appears to make a mockery of judicial power." *Id.* at 1462. But "[s]hort of that eventuality," we explained, "the Tunney Act cannot be interpreted as an authorization for a district judge to assume the role of Attorney General." *Id*. Consequently, a district court should not "reject a consent decree simply because it believes the [g]overnment could have negotiated a more exacting decree," *Massachusetts v. Microsoft Corp*., 373 F.3d 1199 (D.C. Cir. 2004), or because it believes the government "failed to bring the proper charges," *SEC v. Citigroup Global Mkts., Inc*., 752 F.3d 285, 297 (2d Cir. 2014).

As we have since explained, we "construed the public interest inquiry" under the Tunney Act "narrowly" in "part because of the constitutional questions that would be raised if courts were to subject the government's exercise of its prosecutorial discretion to non-deferential review." *Mass.*

Sch. of Law at Andover, Inc. v. United States, 118 F.3d 776, 783 (D.C. Cir. 1997); *see Swift v. United States*, 318 F.3d 250, 253 (D.C. Cir. 2003). The upshot is that the "public interest" language in the Tunney Act, like the "leave of court" authority in Rule 48(a), confers no new power in the courts to scrutinize and countermand the prosecution's exercise of its traditional authority over charging and enforcement decisions.

C.

The same considerations govern our interpretation of the Speedy Trial Act provision at issue here. That provision, as noted, allows for excluding "[a]ny period of delay during which prosecution is deferred by the attorney for the Government pursuant to [a DPA], with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct." 18 U.S.C. § 3161(h)(2). As with the "leave of court" language in Rule 48(a) and the "public interest" authority in the Tunney Act, we construe the "approval of the court" language in § 3161(h)(2) in a manner that preserves the Executive's long-settled primacy over charging decisions and that denies courts substantial power to impose their own charging preferences.

As an initial matter, the context of a DPA, like that of Rule 48(a), concerns the prosecution's core prerogative to dismiss criminal charges. While dismissal under a DPA follows from the defendant's adherence to agreed-upon conditions over a specified period, the decision to seek dismissal pursuant to a DPA—as under Rule 48(a)—ultimately stems from a conclusion that additional prosecution or punishment would not serve the public interest. Dismissal in either situation thereby fulfills the Executive's duty under Article II to see that the laws are faithfully executed. *See Pierce*, 786 F.2d at 1201.