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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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OUBRE v. ENTERGY OPERATIONS, INC.**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT**

No. 96–1291. Argued November 12, 1997– Decided January 26, 1998

In consideration for receipt of severance pay under an employment termination agreement, petitioner Oubre signed a release of all claims against her employer, respondent Entergy Operations, Inc. In procuring the release, Entergy failed to comply in at least three respects with the requirements for a release under the Age Discrimination in Employment Act (ADEA), as set forth in the Older Workers Benefit Protection Act (OWBPA): It did not (1) give Oubre enough time to consider her options, (2) give her seven days to change her mind, or (3) make specific reference to ADEA claims. After receiving her last severance payment, Oubre sued Entergy, alleging constructive discharge on the basis of her age in violation of the ADEA and state law. Entergy moved for summary judgment, claiming Oubre had ratified the defective release by failing to return or offer to return the monies she had received. The District Court agreed and entered summary judgment for Entergy. The Fifth Circuit affirmed.

Held: As the release did not comply with the OWBPA's requirements, it cannot bar Oubre's ADEA claim. The OWBPA provides: "An individual may not waive any [ADEA] claim . . . unless the waiver is knowing and voluntary [A] waiver may not be considered knowing and voluntary unless at a minimum" it satisfies certain enumerated requirements, including the three listed above. 29 U. S. C. §626(f)(1). Thus, the OWBPA implements Congress' policy of protecting older workers' rights and benefits via a strict, unqualified statutory stricture on waivers, and this Court is bound to take Congress at its word. By imposing specific duties on employers seeking releases of ADEA claims and delineating these duties with precision and without exception or qualification, the statute makes its command clear: An employee "may not waive" an ADEA claim unless the

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waiver or release satisfies the OWBPA's requirements. Oubre's release does not do so. Nor did her mere retention of monies amount to a ratification equivalent to a valid release of her ADEA claims, since the retention did not comply with the OWBPA any more than the original release did. Accordingly, even if Entergy has correctly stated the contract ratification and equitable estoppel principles on which it relies, its argument is unavailing because the authorities it cites do not consider the OWBPA's commands. Moreover, Entergy's proposed rule would frustrate the statute's practical operation as well as its formal command. A discharged employee often will have spent the monies received and will lack the means to tender their return. These realities might tempt employers to risk noncompliance with the OWBPA's waiver provisions, knowing that it will be difficult to repay the monies and relying on ratification. This Court ought not to open the door to an evasion of the statute by this device. Pp. 3–6.

112 F. 3d 787, reversed and remanded.

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