

Syllabus

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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DEPARTMENT OF THE ARMY *v.* BLUE FOX, INC.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 97–1642. Argued December 1, 1998– Decided January 20, 1999

Verdan Technology, Inc., an insolvent prime contractor, failed to pay respondent Blue Fox, Inc., a subcontractor, for work the latter completed on a construction project for petitioner, the Department of the Army. Because the Army did not require Verdan to post Miller Act bonds, Blue Fox sued the Army directly, asserting an equitable lien on certain funds held by the Army. Holding that the waiver of sovereign immunity in §10(a) of the Administrative Procedure Act (APA), 5 U. S. C. §702, did not apply to Blue Fox's claim, the District Court concluded that it lacked jurisdiction and granted the Army summary judgment. The Ninth Circuit reversed in relevant part, holding that under *Bowen v. Massachusetts*, 487 U. S. 879, and this Court's cases examining a surety's right of subrogation, the APA waives immunity for equitable actions, thus compelling allowance of Blue Fox's equitable lien.

Held: Section 702 does not nullify the long settled rule that, unless waived by Congress, sovereign immunity bars creditors from enforcing liens on Government property. Although §702 waives the Government's immunity from actions seeking relief "other than money damages," the waiver must be strictly construed, in terms of its scope, in the sovereign's favor and must be "unequivocally expressed" in the statutory text. See *Lane v. Peña*, 518 U. S. 187, 192. Blue Fox's claim does not meet this high standard. *Bowen's* analysis of §702 did not turn on whether a particular claim for relief is "equitable" (a term not found in §702), but on whether the claim is for "money damages," *i.e.*, a sum used as compensatory relief to substitute for a suffered loss, as opposed to a specific remedy that attempts to give the plaintiff the very thing to which he was entitled. See 487 U. S., at 895, 897, 900. The sort of equitable lien Blue Fox sought

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here constitutes a “money damages” claim within §702’s meaning; its goal is to seize or attach money in the Government’s hands as compensation for the loss resulting from Verdán’s default. As a form of substitute and not specific relief, Blue Fox’s action to enforce an equitable lien falls outside the scope of §702’s immunity waiver. This holding accords with the Court’s precedent establishing that sovereign immunity bars creditors from attaching or garnishing funds in the Treasury, see *Buchanan v. Alexander*, 4 How. 20, and enforcing liens against property owned by the United States, see, e.g., *United States v. Ansonia Brass & Copper Co.*, 218 U. S. 452, 471. Respondent points to nothing in §702’s text or history that suggests that Congress intended to overrule this precedent, let alone anything that “unequivocally express[es]” such an intent. *Lane, supra*, at 192. Instead, recognizing that sovereign immunity left subcontractors and suppliers without a remedy against the Government when the general contractor became insolvent, Congress enacted the Miller Act, which by its terms only gives subcontractors the right to sue on the prime contractor’s surety bond, not the right to recover its losses directly from the Government. The cases examining a surety’s right of equitable subrogation, see, e.g., *Pearlman v. Reliance Ins. Co.*, 371 U. S. 132, 141, do not suggest that subcontractors can seek compensation directly against the Government, since none of them involved a sovereign immunity question or a subcontractor directly asserting a claim against the Government. Pp. 4–10.

121 F. 3d 1357, reversed and remanded.

REHNQUIST, C. J., delivered the opinion for a unanimous Court.