SUPREME COURT OF THE UNITED STATES

No. 15–1293

JOSEPH MATAL, INTERIM DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE, PETITIONER *v.* SIMON SHIAO TAM

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[June 19, 2017]

JUSTICE THOMAS, concurring in part and concurring in the judgment.

I join the opinion of JUSTICE ALITO, except for Part II. Respondent failed to present his statutory argument either to the Patent and Trademark Office or to the Court of Appeals, and we declined respondent's invitation to grant certiorari on this question. *Ante*, at 9. I see no reason to address this legal question in the first instance. See *Star Athletica, L. L. C.* v. *Varsity Brands, Inc.*, 580 U. S. ___, ___ (2017) (slip op., at 6).

I also write separately because "I continue to believe that when the government seeks to restrict truthful speech in order to suppress the ideas it conveys, strict scrutiny is appropriate, whether or not the speech in question may be characterized as 'commercial.'" *Lorillard Tobacco Co.* v. *Reilly*, 533 U. S. 525, 572 (2001) (THOMAS, J., concurring in part and concurring in judgment); see also, *e.g.*, *44 Liquormart, Inc.* v. *Rhode Island*, 517 U. S. 484, 518 (1996) (same). I nonetheless join Part IV of JUSTICE ALITO's opinion because it correctly concludes that the disparagement clause, 15 U. S. C. §1052(a), is unconstitutional even under the less stringent test announced in *Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 557 (1980).