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OFFICIAL REPORTS

OF

THE SUPREME COURT

BEGINNING OF TERM

OCTOBER 5, 2020, THROUGH FEBRUARY 22, 2021

REBECCA A. WOMELDORF
REPORTER OF DECISIONS

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Vol. 592 (Pp. 1–208; 901–1300)
UNITED STATES REPORTS
Part 1

JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS*

JOHN G. ROBERTS, JR., CHIEF JUSTICE.
CLARENCE THOMAS, ASSOCIATE JUSTICE.
RUTH BADER GINSBURG, ASSOCIATE JUSTICE.[1]
STEPHEN BREYER, ASSOCIATE JUSTICE.
SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE.
SONIA SOTOMAYOR, ASSOCIATE JUSTICE.
ELENA KAGAN, ASSOCIATE JUSTICE.
NEIL M. GORSUCH, ASSOCIATE JUSTICE.
BRETT M. KAVANAUGH, ASSOCIATE JUSTICE.
AMY CONEY BARRETT, ASSOCIATE JUSTICE.[2]

RETIRED

SANDRA DAY O'CONNOR, ASSOCIATE JUSTICE.
ANTHONY M. KENNEDY, ASSOCIATE JUSTICE.
DAVID H. SOUTER, ASSOCIATE JUSTICE.

OFFICERS OF THE COURT

WILLIAM P. BARR, ATTORNEY GENERAL.[3]
JEFFREY A. ROSEN, ACTING ATTORNEY GENERAL.[4]
MONTY WILKINSON, ACTING ATTORNEY GENERAL.[5]
JEFFREY B. WALL, ACTING SOLICITOR GENERAL.[6]
ELIZABETH PRELOGAR, ACTING SOLICITOR GENERAL.[7]
SCOTT S. HARRIS, CLERK.
REBECCA A. WOMELDORF, REPORTER OF DECISIONS.[8]
DERRICK LINDSEY, ACTING REPORTER OF DECISIONS.
RICHARD NELSON, ACTING MARSHAL.
LINDA S. MASLOW, LIBRARIAN.

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* For notes, see p. II.

NOTES

[1] JUSTICE GINSBURG died at her home in Washington, D. C. on September 18, 2020. See *post*, p. v.

[2] The Honorable Amy Coney Barrett, of Illinois, formerly a Judge of the United States Court of Appeals for the Seventh Circuit, was nominated by President Trump on September 26, 2020, to be an Associate Justice of this Court; the nomination was confr med by the Senate on October 26, 2020; she was commissioned and took the oaths on October 27, 2020.

[3] Attorney General Barr resigned effective December 23, 2020.

[4] Mr. Rosen became Acting Attorney General December 24, 2020. Mr. Rosen resigned effective January 20, 2021.

[5] Mr. Wilkinson became Acting Attorney General January 20, 2021.

[6] Mr. Wall resigned effective January 20, 2021.

[7] Ms. Prelogar became Acting Solicitor effective January 20, 2021.

[8] Ms. Womeldorf was appointed Reporter of Decisions effective January 25, 2021. See *post*, p. VII and 1232.

SUPREME COURT OF THE UNITED STATES

ALLOTMENT OF JUSTICES

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, effective October 19, 2018, viz.:

For the District of Columbia Circuit, JOHN G. ROBERTS, JR., Chief Justice.

For the First Circuit, STEPHEN BREYER, Associate Justice.

For the Second Circuit, RUTH BADER GINSBURG, Associate Justice.

For the Third Circuit, SAMUEL A. ALITO, JR., Associate Justice.

For the Fourth Circuit, JOHN G. ROBERTS, JR., Chief Justice.

For the Fifth Circuit, SAMUEL A. ALITO, JR., Associate Justice.

For the Sixth Circuit, SONIA SOTOMAYOR, Associate Justice.

For the Seventh Circuit, BRETT M. KAVANAUGH, Associate Justice.

For the Eighth Circuit, NEIL M. GORSUCH, Associate Justice.

For the Ninth Circuit, ELENA KAGAN, Associate Justice.

For the Tenth Circuit, SONIA SOTOMAYOR, Associate Justice.

For the Eleventh Circuit, CLARENCE THOMAS, Associate Justice.

For the Federal Circuit, JOHN G. ROBERTS, JR., Chief Justice.

October 19, 2018.

(For next previous allotment, see 586 U. S., Pt. 1, p. III.)
(For next subsequent allotment, see *post*, p. IV.)

SUPREME COURT OF THE UNITED STATES

Allotment of Justices

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, effective November 20, 2020, viz.:

For the District of Columbia Circuit, John G. Roberts, Jr., Chief Justice.

For the First Circuit, Stephen Breyer, Associate Justice.

For the Second Circuit, Sonia Sotomayor, Associate Justice.

For the Third Circuit, Samuel A. Alito, Jr., Associate Justice.

For the Fourth Circuit, John G. Roberts, Jr., Chief Justice.

For the Fifth Circuit, Samuel A. Alito, Jr., Associate Justice.

For the Sixth Circuit, Brett M. Kavanaugh, Associate Justice.

For the Seventh Circuit, Amy Coney Barrett, Associate Justice.

For the Eighth Circuit, Brett M. Kavanaugh, Associate Justice.

For the Ninth Circuit, Elena Kagan, Associate Justice.

For the Tenth Circuit, Neil M. Gorsuch, Associate Justice.

For the Eleventh Circuit, Clarence Thomas, Associate Justice.

For the Federal Circuit, John G. Roberts, Jr., Chief Justice.

November 20, 2020.

(For next previous allotment, see *ante*, p. III.)

DEATH OF JUSTICE GINSBURG

Supreme Court of the United States

OCTOBER, 5, 2020

Present: Chief Justice Roberts, Justice Thomas, Justice Breyer, Justice Alito, Justice Sotomayor, Justice Kagan, Justice Gorsuch, and Justice Kavanaugh.

The Chief Justice said:

I note that memorial drapery has been erected on the door of our courtroom and on the Bench to signify mourning for Justice Ruth Bader Ginsburg, who died on September 18, 2020. Justice Ginsburg was born in Brooklyn, New York, March 15, 1933. She received her B. A. from Cornell University and married Martin D. Ginsburg shortly after graduation. They briefy lived in Oklahoma, where Marty was stationed when called to active duty in the Army. They both pursued a career in law. She attended Harvard Law School and received her LL.B. from Columbia Law School in 1959, tied for frst in her class.

Justice Ginsburg served as a law clerk to the Honorable Edmund L. Palmieri, Judge of the United States District Court for the Southern District of New York, from 1959 to 1961. From 1961 to 1963, she was a research associate and then associate director of the Columbia Law School Project on International Procedure.

Justice Ginsburg was a professor of law at Rutgers University School of Law from 1963 to 1972, and Columbia Law School from 1972 to 1980. In 1971, she was instrumental in

launching the Women's Rights Project of the American Civil Liberties Union. She argued six signifcant gender discrimination cases in this Court, winning fve .

President Carter appointed Justice Ginsburg to the United States Court of Appeals for the District of Columbia Circuit, and she served there as a Circuit Judge from 1980 to 1993. President Clinton appointed her to this Court in 1993. She was the second woman appointed to the Court and served more than 27 years. During her time on the Court, she authored 483 majority, concurring, and dissenting opinions.

Justice Ginsburg's contributions as advocate, jurist, and citizen are immeasurable. We at the Court will remember her as a dear friend and treasured colleague.

Justice Ginsburg is survived by her two children: Jane Carol Ginsburg and James Steven Ginsburg; four grandchildren; two step-grandchildren; and one great-grandchild. We extend our condolences to her children, extended family, and countless admirers.

At an appropriate time, the traditional memorial service of the Court and Bar will be held in our Courtroom.

APPOINTMENT OF REPORTER OF DECISIONS

Supreme Court of the United States

MONDAY, FEBRUARY 22, 2021

Present: Chief Justice Roberts, Justice Thomas, Justice Breyer, Justice Alito, Justice Sotomayor, Justice Kagan, Justice Gorsuch, Justice Kavanaugh, and Justice Barrett.

The Chief Justice said:

I am pleased to announce that the Court has appointed Rebecca Anne Womeldorf as Reporter of Decisions. Ms. Womeldorf was formerly Chief Counsel to the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States. We wish her well in her service as the Court's 17th Reporter of Decisions, which she commenced on January 25th.

INDEX

(Vol. 592 U. S., Part 1)

ADMINISTRATIVE REVIEW. See **United States Railroad Retirement Board.**

ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996.

AEDPA deference reaffirmed—Mitigation-prejudice analysis reversed—Summary disposition issued.—Under deferential standard of Antiterrorism and Effective Death Penalty Act of 1996, Ninth Circuit exceeded its authority in rejecting state court's determination that Kayer failed to show prejudice in his ineffective-assistance-of-counsel claim. Shinn v. Kayer, p. 111.

ARKANSAS. See **Employee Retirement Income Security Act of 1974.**

ARTICLE III STANDING. See **Federal Jurisdiction.**

No Article III injury—Able-and-ready theory insufficient—Dismissed for lack of standing.—Because plaintiff Adams has not shown that he was "able and ready" to apply for judicial vacancy in imminent future, *Grats* v. *Bollinger*, 539 U. S. 244, 262, he has failed to demonstrate Article III standing to challenge Delaware Constitution's political balance requirement for appointments to State's major courts. Carney v. Adams, p. 53.

AUTOMATIC STAYS. See **Bankruptcy Law.**

BANKRUPTCY LAW.

Retention is not control—No § 362 automatic stay violation—Turnover lies under § 542.—Mere retention of estate property after f ling of a bankruptcy petition does not violate 11 U. S. C. § 362(a)(3), which operates as a "stay" of "any act" to "exercise control" over property of estate. Chicago v. Fulton, p. 154.

CAPITAL SENTENCING. See **Antiterrorism and Effective Death Penalty Act of 1996.**

CENSUS. See **Federal Jurisdiction.**

CERTIFIED QUESTION.

Protest organizer liability—Unsettled state-law liability—Certification to Louisiana Supreme Court.—Under unusual circumstances of this case, Fifth Circuit should not have ventured into such an uncertain area of state tort law without frst using state certifcati on procedures to seek guidance from Louisiana Supreme Court. Mckesson v. Doe, p. 1.

CIVIL LIABILITY. See **Certified Question.**

CONDITIONS OF CONFINEMENT. See **Immunity from Suit.**

CONGRESSIONAL REDISTRICTING. See **Federal Jurisdiction.**

COVID–19 RESTRICTIONS. See **Preliminary Injunctions.**

DELAWARE. See **Article III Standing.**

DOMESTIC TAKINGS RULE. See **Foreign Sovereign Immunities Act.**

EIGHTH AMENDMENT. See **Immunity from Suit.**

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

ERISA pre-emption rejected—State PBM reimbursement rules upheld—Act 900 sustained.—Arkansas' Act 900—which effectively requires pharmacy benefit managers to reimburse Arkansas pharmacies for cost of drugs covered by prescription-drug plans at a price equal to or higher than pharmacy's wholesale cost—is not pre-empted by Employee Retirement Income Security Act of 1974. Rutledge v. Pharmaceutical Care Management Assn., p. 80.

EQUITABLE APPORTIONMENT. See **Riparian Rights.**

FEDERAL JURISDICTION.

Apportionment dispute unripe—Jurisdiction lacking—Vacatur and remand ordered.—Because plaintiffs have not shown standing and because claims presented are not ripe for adjudication, District Court's judgment is vacated, and case is remanded with instructions to dismiss for lack of jurisdiction. Trump v. New York, p. 125.

FIRST AMENDMENT. See **Certified Question.**

FIRST AMENDMENT. See **Preliminary Injunctions.**

FOREIGN SOVEREIGN IMMUNITIES ACT.

Domestic takings rule controls—FSIA expropriation exception inapplicable—Jurisdiction barred.—Foreign Sovereign Immunities Act's expropriation exception, 28 U. S. C. § 1605(a)(3), incorporates domestic takings rule, which recognizes that a foreign sovereign's taking of its own

FOREIGN SOVEREIGN IMMUNITIES ACT—Continued.

nationals' property is not a violation of international law. Federal Republic of Germany v. Philipp, p. 169.

Domestic takings rule controls—FSIA expropriation exception inapplicable—Jurisdiction barred.—Judgment vacated and case remanded to District of Columbia Circuit for further proceedings consistent with *Federal Republic of Germany* v. *Philipp*, 592 U. S. 169 (2021). Republic of Hungary v. Simon, p. 207.

FREEDOM OF RELIGION. See **Preliminary Injunctions.**

HABEAS CORPUS. See **Antiterrorism and Effective Death Penalty Act of 1996.**

HEALTH CARE COSTS. See **Employee Retirement Income Security Act of 1974.**

IMMUNITY FROM SUIT.

Obvious cruelty defeats immunity—Extreme conditions of confinement—Summary reversal granted.—Because any reasonable correctional offcer should have realized that inmate Taylor's conditions of conf nement offended Eighth Amendment, Fifth Circuit erred in granting offcers qualifed immunity. Taylor v. Riojas, p. 7.

INDIVIDUAL CAPACITY LIABILITY OF FEDERAL OFFICIALS. See **Religious Freedom Restoration Act of 1993.**

INEFFECTIVE ASSISTANCE OF COUNSEL. See **Antiterrorism and Effective Death Penalty Act of 1996.**

INTERNATIONAL LAW. See **Foreign Sovereign Immunities Act.**

INTERSTATE COMPACTS. See **Riparian Rights.**

JUDICIAL APPOINTMENTS. See **Article III Standing.**

JUDICIAL REVIEW. See **United States Railroad Retirement Board.**

LOUISIANA. See **Certified Question.**

MILITARY COURTS. See **Uniform Code of Military Justice.**

MONEY DAMAGES. See **Religious Freedom Restoration Act of 1993.**

NEW MEXICO. See **Riparian Rights.**

ORIGINAL JURISDICTION. See **Riparian Rights.**

PHARMACY BENEFIT MANAGERS. See **Employee Retirement Income Security Act of 1974.**

PRE-EMPTION OF STATE REGULATIONS. See **Employee Retirement Income Security Act of 1974.**

PRELIMINARY INJUNCTIONS.

Worship capacity caps enjoined—Free Exercise strict scrutiny—Irreparable harm shown.—Respondent is enjoined from enforcing Executive Order 202.68's 10- and 25-person occupancy limits on Applicant pending disposition of appeal in Second Circuit and disposition of petition for a writ of certiorari, if such writ is timely sought. Roman Catholic Diocese of Brooklyn v. Cuomo, p. 14.

PRESCRIPTION DRUGS. See **Employee Retirement Income Security Act of 1974.**

PRISONER RIGHTS. See **Immunity from Suit.**

PROTESTS. See **Certified Question.**

PUBLIC HEALTH ORDERS. See **Preliminary Injunctions.**

QUALIFIED IMMUNITY. See **Immunity from Suit.**

RAILROAD RETIREMENT ACT OF 1974. See **United States Railroad Retirement Board.**

RAILROAD UNEMPLOYMENT INSURANCE ACT. See **United States Railroad Retirement Board.**

RAPE. See **Uniform Code of Military Justice.**

RELIGIOUS FREEDOM RESTORATION ACT OF 1993.

RFRA damages remedy recognized—Individual-capacity liability available—Text and history control.—Religious Freedom Restoration Act of 1993's express remedies provision, see 42 U. S. C. § 2000bb–1(c), permits litigants, when appropriate, to obtain money damages against federal offcia ls in their individual capacities. Tanzin v. Tanvir, p. 43.

REMEDIES. See **Religious Freedom Restoration Act of 1993.**

RESTITUTION CLAIMS. See **Foreign Sovereign Immunities Act.**

RETIREMENT BENEFITS. See **United States Railroad Retirement Board.**

RIPARIAN RIGHTS.

Pecos River credit resolved—Special Master affirmed—No additional relief.—Texas's motion to review Pecos River Master's determination—that New Mexico was entitled to a delivery credit for evaporated water stored at Texas's request under Pecos River Compact—is denied. Texas v. New Mexico, p. 98.

RIPENESS. See **Article III Standing.**

RIPENESS. See **Federal Jurisdiction.**

SECTION 1983. See **Immunity from Suit.**

SECURED CREDITORS. See **Bankruptcy Law.**

SEXUAL ASSAULT. See **Uniform Code of Military Justice.**

SPECIAL MASTER. See **Riparian Rights.**

STATE CONSTITUTIONAL LAW. See **Article III Standing.**

STATE REGULATION. See **Employee Retirement Income Security Act of 1974.**

STATE TORT LAW. See **Certified Question.**

STATUTE OF LIMITATIONS. See **Uniform Code of Military Justice.**

STATUTORY INTERPRETATION. See **Religious Freedom Restoration Act of 1993.**

SUPREME COURT.

1. Notice of death of JUSTICE GINSBURG, p. v.

2. Appointment of Rebecca A. Womeldorf as Reporter of Decisions, p. VII.

TEXAS. See **Riparian Rights.**

UNIFORM CODE OF MILITARY JUSTICE.

No time bar for rape—UCMJ prosecutions revived—Convictions reinstated.—Respondents' prosecutions for military rape were timely commenced under Uniform Code of Military Justice's statute of limitations. United States v. Briggs, p. 69.

UNITED STATES RAILROAD RETIREMENT BOARD.

RRB reopening decisions reviewable—Judicial review available—Remand to the Board.—United States Railroad Retirement Board's denial of a request to reopen a prior benefts determination under Railroad Retirement Act of 1974 and Railroad Unemployment Insurance Act is subject to judicial review. Salinas v. Railroad Retirement Bd., p. 188.

TABLE OF CASES REPORTED

(Vol. 592 U. S., Part 1)

NOTES:

This volume provides the permanent United States Reports citation for all reported cases. Cases reported before page 901 are those decided with opinions of the Court or decisions *per curiam*. Cases reported on page 901 *et seq.* are those in which orders were entered. Although the Table of Cases Reported does not list orders denying a petition for writ of certiorari, such orders are included chronologically in this volume.

The syllabus in a case 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 (1906).

A list of counsel who argued or filed briefs in a reported case, and who were members of the Court's Bar at the time the case was argued, are included in the United States Reports along with the Court's opinion in the case.

	Page
A.; A. I. *v.*	999
Abbott; Planned Parenthood Center for Choice *v.*	1232
Abutaleb *v.* Abutaleb	1167
Adams; Carney *v.*	53
Adams & Boyle, P. C.; Slatery *v.*	1233
Administrator of penal or correctional institution. See name or title of administrator.	
Agudath Israel of America *v.* Cuomo	1119
A. I. *v.* M. A.	999
Akel, *In re*	1168,1261
Akers *v.* United States	1095
Alamu; McCoy *v.*	1259
Alaska Native Village Corp. Assn. *v.* Confederated Tribes	1163
Albritton *v.* Brnovich	908
Alcaraz-Enriquez; Rosen *v.*	1218
Alford, *In re*	1000,1196
Allen, *In re*	910
Allen *v.* Jordan	1194

Page
Allen *v.* Mine 1138
Allen *v.* Moore 1154
Allen *v.* Total Visa 1138
Allen *v.* Tri-Lift North Carolina, Inc. 1195
Allison; Duran *v.* 1300
Allred *v.* Uttecht 1242
Ally Financial Inc. *v.* Haskins 1218
Alston; American Athletic Conference *v.* 1156,1166
Alston; National Collegiate Athletic Assn. *v.* 1156,1166
American Athletic Conference *v.* Alston 1156,1166
American College of Obstetricians; FDA *v.* 990,1196
American Medical Assn. *v.* Cochran 1262
Americans for Prosperity Foundation *v.* Becerra 1162
Ames; Dixon *v.* 1242
Ames *v.* HSBC Bank, USA, N. A. 1195
AMG Capital Management, LLC *v.* Federal Trade Comm'n . . . 908,1084
Ammar I. *v.* Connecticut 999
Amos *v.* Bowen 1195
Amtrak; Goodwine *v.* 907
Anaya, *In re* 1085
Anderson *v.* Colorado 1138
Anderson *v.* Inch 1139
Anderson *v.* United States 1095
Andino *v.* Middleton 906
Annett Holdings, Inc.; Ellerbee *v.* 1139
Apple, Inc.; Arunachalam *v.* 903
Arana-Molina *v.* Barr 994
Archer & White Sales, Inc.; Henry Schein, Inc. *v.* 168,909
Arctic Cat Inc. *v.* Bombardier Recreational Products Inc. 1094
Arizona Republican Party *v.* Democratic National Committee . . . 1234
Arkansas *v.* Gresham 1121,1166
Arkansas Teacher Ret. System; Goldman Sachs Group, Inc. *v.* . . . 1144
Arnold; Ranteesi *v.* 1071
Arthrex, Inc. *v.* Smith & Nephew, Inc. 1000,1085,1166
Arthrex, Inc.; Smith & Nephew, Inc. *v.* 1000,1085,1165
Arthrex, Inc.; United States *v.* 1085,1165
Arunachalam, *In re* 911,1085
Arunachalam *v.* Apple, Inc. 903
Arunachalam *v.* Presidio Bank 903
Arunachalam *v.* SAP America, Inc. 903
Arunachalam *v.* Wells Fargo Bank, N. A. 902
Aspen Pitkin County Housing Authority; Mulcahy *v.* 1194
Assistant Clerk, Super. Ct. of N. C., Buncombe Cty.; Womack *v.* 1138
Atkins *v.* Saul 1119

Page
Attorney General; Arana-Molina *v.* 994
Attorney General; Benavides *v.* 1094
Attorney General *v.* Hall 1111
Attorney General; Hall *v.* 1111
Attorney General; Heidari *v.* 1095
Attorney General of Ariz.; Albritton *v.* 908
Attorney General of Ariz. *v.* Democratic National Committee . . . 1234
Attorney General of Cal.; Americans for Prosperity Foundation *v.* 1162
Attorney General of Cal.; Thomas More Law Center *v.* 1162
Attorney General of Tenn. *v.* Adams & Boyle, P. C. 1233
Attorney Grievance Comm'n of Md.; Rheinstein *v.* 1139
Azar *v.* Gresham 1121,1166
Azar *v.* Philbrick 1121,1166
Azeez *v.* West Va. 1242
Bailey *v.* United States 1195
Ball *v.* Doe 1022
Banco Santander Puerto Rico; Rosado-Sanchez *v.* 1139
Bank of America, N. A.; Sachs *v.* 1195
Bank of New York Mellon; Ruttkamp *v.* 1299
Banks *v.* U. S. District Court 903
Baptiste *v.* Koenig 1164
Barnes, *In re* 910,1139
Barnes *v.* Dowling 1195
Barr; Arana-Molina *v.* 994
Barr; Benavides *v.* 1094
Barr *v.* Hall 1111
Barr; Hall *v.* 1111
Barr; Heidari *v.* 1095
Barth *v.* Bernards Township Planning Bd. 1155
BASF; Kitchen *v.* 1084
Baskin; Hadsell *v.* 1154
Baylor; Petrano *v.* 1300
Becerra; Americans for Prosperity Foundation *v.* 1162
Becerra; Thomas More Law Center *v.* 1162
Becker; Holmes *v.* 1072
Beggs, *In re* 1123,1300
Belanus *v.* Dutton 1195
Benavides *v.* Barr 1094
Benitez, *In re* 1085
Bennett; Campbell *v.* 1138
Bennett *v.* Marvel Entertainment, LLC 1138
Berger *v.* North Carolina State Bd. of Elections 1071
Berks County, Pa.; Smiles *v.* 1138
Bernards Township Planning Bd.; Barth *v.* 1155

Page
Berry, *In re* 1000
Berry *v.* Wells Fargo Bank, N. A. 1261
Beshear; Danville Christian Academy, Inc. *v.* 1156
Bey *v.* Doughtery Cty. State Court 1138
Biden *v.* California 1234
Biden *v.* Sierra Club 1234,1243
Biden; Trump *v.* 1167
Bishop; Kelly *v.* 1164
B. L.; Mahanoy Area School Dist. *v.* 1162
Blacher *v.* California 994
Blancas, *In re* 1000
Blaszczak *v.* United States 1163
Bogan, *In re* 1000
Bombardier Recreational Products Inc.; Arctic Cat Inc. *v.* 1094
Bonds; Washington *v.* 907
Boockvar; Donald J. Trump for President Inc. *v.* 1167
Boockvar; Republican Party of Pa. *v.* 1023,1068
Boockvar; Scarnati *v.* 1022
Borden *v.* Swarthout 1196
Boucher *v.* Lyons 1261
Bowell *v.* State Bar of Cal. 1111
Bowen; Amos *v.* 1195
Bowman *v.* Boyd 1195
Boyd; Bowman *v.* 1195
BP p. l. c. *v.* Mayor and City Council of Baltimore 1161
Bracken, *In re* 910
Bradford, *In re* 1261
Braunstein *v.* Braunstein 1299
Briggs; United States *v.* 69
Britton-Harr, *In re* 1234
Brnovich; Albritton *v.* 908
Brnovich *v.* Democratic National Committee 1234
Brown *v.* Davenport 1242
Brown *v.* Department of Labor 1299
Brown; Lynn *v.* 1299
Brown; Stubblefeld *v.* 1139
Brownlee *v.* Capozza 1167
Brumbley; Jones *v.* 906
Brun; Jackson *v.* 1094
Brzowski *v.* Executive Committee of the U. S. District Court . . . 1154
Buchanan; Vance *v.* 1195
Burnside *v.* Rewerts 1195
Buxton *v.* Dougherty 1259
By Design Furniture; Dutta-Roy *v.* 1194

Page
Cabello *v.* United States 906,1148
Cain; Lavergne *v.* 1195
Calhoun *v.* Florida Dept. of Corrections 1225
California; Biden *v.* 1234
California; Blacher *v.* 994
California; Davis *v.* 908
California; Gutierrez *v.* 1138
California; Hanna *v.* 909
California; Harrell *v.* 1194
California; Lange *v.* 1024,1065,1113,1234
California; McColm *v.* 904
California; Trump *v.* 1024
California Contractors State License Bd.; Dummer *v.* 1111
California Dept. of Corrections and Rehabilitation; Dunigan *v.* . . 1259
California Dept. of Industrial Relations; Drevaleva *v.* 1299
Calmese, *In re* 1072
Calton, *In re* 910,911
Calton *v.* Texas 904
Calvary Chapel Dayton Valley *v.* Sisolak 1166
Cameron *v.* Walrath 1217
Campbell *v.* Bennett 1138
Caniglia *v.* Strom 1112
Capiro; Jones *v.* 1164
Capozza; Brownlee *v.* 1167
Cargill, Inc. *v.* Doe 1072
Carmell *v.* Lumpkin 902
Carney *v.* Adams 53
Carr *v.* Saul 1085,1166
Carrasco *v.* United States 1148
Carrier *v.* Colorado 1083
Castro; Henry-Bey *v.* 1194
Caterbone *v.* Lancaster Cty. Prison 1083,1167
Caterbone *v.* National Security Agency 902,1104
Catron; Van Auken *v.* 1138
Cattail Creek Community Assn.; Thompson *v.* 907
Cave *v.* Delta Dental of Cal. 1195
Cean *v.* United States 909,1225
Cedar Point Nursery *v.* Hassid 1094,1122
Centene Corp.; Stone *v.* 1094
Cesspooch *v.* United States 907
Chades, *In re* 1168
Charlton; Coppedge *v.* 1138
Chavez; Pham *v.* 909
Chicago *v.* Fulton 154

Page
Chief Justice, Sup. Ct. of U. S.; Kuang-Bao Ou-Young *v.* 1226
Chief Justice, Sup. Ct. of U. S.; Yi Tai Shao *v.* 1147
Chief of Police, City of Carlsbad, Cal.; Diggs *v.* 1299
Cho *v.* Select Portfolio Servicing, Inc. 1225
Christian *v.* Oklahoma 1148,1217
Chukwuani *v.* Solon City School Dist. 1195
Circosta; Moore *v.* 1065
Circosta; Wise *v.* 1065
Cirota *v.* Inch 1071
Citizens for Responsibility and Ethics in Wash.; Trump *v.* 1233
City. See name of city.
City of Jackson, Miss.; Felton *v.* 909
Clark *v.* Fye 905
Clerk, Circuit Court of Ill., Cook Cty.; Stubblefeld *v.* 1139
Cochran; American Medical Assn. *v.* 1262
Cochran *v.* Mayor and City Council of Baltimore 1262
Cochran; Oregon *v.* 1262
Collier; Valentine *v.* 1095
Collins; Erickson *v.* 1225
Collins *v.* Mnuchin 1084
Collins; Mnuchin *v.* 1084
Colorado; Anderson *v.* 1138
Colorado; Carrier *v.* 1083
Comcast Cable Communications, LLC *v.* Rovi Guides, Inc. 1120
Comcast Corp. *v.* Viamedia, Inc. 1122
Commissioner; Heff in *v.* 1119
Commissioner; Kannry *v.* 1118
Commissioner of Internal Revenue. See Commissioner.
Commissioner of Social Security; Atkins *v.* 1085,1119
Commissioner of Social Security; Carr *v.* 1086,1166
Commissioner of Social Security; Davis *v.* 1166
Commissioner of Social Security; Hilliard *v.* 1086,1166
Commissioner of Social Security; Rumzis *v.* 1023
Cone *v.* Florida 1104
Conerly *v.* United States 908
Confederated Tribes; Alaska Native Village Corp. Assn. *v.* 1163
Confederated Tribes; Mnuchin *v.* 1163
Connecticut; Ammar I. *v.* 999
Continental Automotive Systems US, Inc.; Ukpai *v.* 1154
Cooley; United States *v.* 1112,1218
Coppedge *v.* Charlton 1138
Corbett; Thomas *v.* 1021
Corrections Commissioner. See name of commissioner.
Cortez; Curtin *v.* 999

Page
Costa Mesa Police Dept.; Lopez *v.* 905,1122
Coughlin *v.* United States 909
Coultas *v.* Tichenor 1299
County. See name of county.
Court of Appeal of Cal., First App. Dist.; Drevaleva *v.* 1299
Court of Appeal of Cal., Sixth App. Dist.; Sepehry-Fard *v.* . . 1233,1259
Court of Common Pleas of Ohio, Hamilton Cty.; Simpson *v.* . . 1022,1149
Court of Common Pleas of Pa., Northampton Cty.; Scarborough *v.* 1111
Cox *v.* Texas Workforce Comm'n 1154
Crayton *v.* Lumpkin 1138
Credit Bureau Center, LLC; Federal Trade Comm'n *v.* 908,1084
Crosby *v.* True 1083,1165
Cummings *v.* Premier Rehab Keller, P. L. L. C. 1072
Cuomo; Agudath Israel of America *v.* 1119
Cuomo; Roman Catholic Diocese of Brooklyn *v.* 14
Curtin *v.* Cortez 999
Dahood; Lussy *v.* 1196
Dai; Rosen *v.* 1218
Dakota Cty. Social Services; Mitchell *v.* 1260
Danville Christian Academy, Inc. *v.* Beshear 1156
Darden *v.* Fort Worth, Tex. 1084
Dauphin Cty. Social Services for Children and Youth; R. W. *v.* . . . 1194
Davenport; Brown *v.* 1242
Davis *v.* California 908
Davis; Jaime Jimenez *v.* 1035
Davis *v.* Saul 1086,1166
Dawson *v.* Pakenham 1139
Day *v.* Watson 904
Deal; Miller *v.* 1300
Debera P. *v.* Maine Dept. of Health and Human Services 1121
DeCarlo *v.* United States 1165
Defense Finance and Accounting Service; Rizk *v.* 1195
de Jesus-Concepcion *v.* United States 1300
Delaware; Riley *v.* 1165
Deloach; Pugh *v.* 1195
Delta Dental of Cal.; Cave *v.* 1195
Demery, *In re* 1168
Democratic National Committee; Arizona Republican Party *v.* . . . 1234
Democratic National Committee; Brnovich *v.* 1234
Democratic National Committee *v.* Wisconsin State Legislature 1039
Deng, *In re* 910
Department of Ed.; Lan Tu Trinh *v.* 907
Department of Homeland Security *v.* New York 1262

Page
Department of Justice *v.* House Committee on the Judiciary .. 909,1112
Department of Justice; Rose *v.* 1023
Department of Labor; Brown *v.* 1299
Department of Veterans Affairs; Shepard *v.* 1218
Deutsche Bank National Trust Co.; Timbes *v.* 1084
Deutsche Bank Trust Co. *v.* Robert R. McCormick Found. 909,1120
Diggs *v.* Gallucci 1299
Diggs *v.* Shiomoto 1299
Director of California Dept. of Motor Vehicles; Diggs *v.* 1299
Director of penal or correctional institution. See name or title of director.
Director, United States Patent and Trademark Offce; Morsa *v.* 1094
DISH Network L. L. C. *v.* United States 1161
District Attorney of the County of New York; Trump *v.* 1260
District Court. See U. S. District Court.
District Judge. See U. S. District Judge.
District of Columbia; Lattisaw *v.* 999
District of Columbia; S. O. *v.* 908
District of Columbia; Trump *v.* 1233
Dixon *v.* Ames 1242
Dizzley, *In re* 1104,1196
Dobin; Smith *v.* 1123
Dobson *v.* Stolle 1195
Doe; Ball *v.* 1022
Doe; Cargill, Inc. *v.* 1072
Doe; Mckesson *v.* 1
Doe; Nestlé USA, Inc. *v.* 1085
Doe Co. *v.* United States 1260
Donahue *v.* Pennsylvania 904,1085
Donald J. Trump for President *v.* Boockvar 1167
Donald J. Trump for President *v.* Elkin 1167
Donald J. Trump for President *v.* Philadelphia Bd. of Elections 1167
Dougherty; Buxton *v.* 1259
Doughtery Cty. State Court; Bey *v.* 1138
Dowling; Barnes *v.* 1195
Drevaleva *v.* California Dept. of Industrial Relations 1299
Drevaleva *v.* Court of Appeal of Cal., First Appellate Dist. 1299
Drevaleva *v.* United States 994,1122
Driessen *v.* Miami-Dade County, Fla. 1121
Dubin *v.* Offce of Disciplinary Counsel 1121
Ducey; Taebel *v.* 1138
Duffy; Williams *v.* 1138
Duguid; Facebook, Inc. *v.* 1084
Dumas; Thorpe *v.* 1194

Page
Dummer *v.* California Contractors State License Bd. 1111
Dunahue *v.* Kelley 1138
Dunigan *v.* California Dept. of Corrections and Rehabilitation . . . 1259
Dunn *v.* Smith 1255,1258
Dupuy, *In re* 910
Duran *v.* Allison 1300
Dutta-Roy *v.* By Design Furniture 1194
Dutta-Roy *v.* Jysk Bed'n Linen 1194
Dutton; Belanus *v.* 1195
Ebner Family Trust; Sancho *v.* 902
Edwards *v.* Vannoy 1023
Eighth Judicial District Court of Nev., Clark County; Shawn *v.* 1300
Elansari, *In re* 1000
Ellerbee *v.* Annett Holdings, Inc. 1139
Ellerbee *v.* TMC Transportation 1139
Ellis *v.* United States 907,1195
Erickson *v.* Collins 1225
Esper; Reeves *v.* 1154
Estevez; McClung *v.* 1261
Evans, *In re* 910
Evans *v.* Kahele 1148
Executive Committee of the U. S. District Court; Brzowski *v.* . . . 1154
Facebook, Inc. *v.* Duguid 1084
Fairchild-Littlefeld, *In re* 910,1118
FCC *v.* Prometheus Radio Project 1162
Federal Republic of Germany *v.* Philipp 169,1084
Federal Trade Comm'n; AMG Capital Management, LLC *v.* . . 908,1085
Federal Trade Comm'n *v.* Credit Bureau Center, LLC 908,1084
Felix, *In re* 912
Felton *v.* Jackson, Miss. 909
Findlay, *In re* 1000
Fineman; Lan Tu Trinh *v.* 907
Finkelstein; Womack *v.* 1138
First Merchant's Bank; Walton *v.* 1139
Fishman; Markovic *v.* 1260
Fleming; McNeal *v.* 1194
Florida; Cone *v.* 1104
Florida *v.* Georgia 908
Florida; Ingraham *v.* 1194
Florida; Safford *v.* 907
Florida; Wilson *v.* 1071,1167
Florida Dept. of Corrections; Calhoun *v.* 1225
Florida Dept. of Corrections; Jenkins *v.* 1233
Foley; Sanderson *v.* 1195

Page
FDA *v.* American College of Obstetricians 990,1196
Fort Worth, Tex.; Darden *v.* 1084
Foster; Sanders *v.* 1148,1261
Francisco Vega *v.* Poppell 1083
Francois *v.* Wilkinson 1226
Frawley *v.* Frawley 909
Frawley; Frawley *v.* 909
Friendship Pavilion Acquisition Co., LLC; Sundy *v.* 994,1071
Fulton; Chicago *v.* 154
Fulton *v.* Philadelphia, Pa. 908
Fye; Clark *v.* 905
Gallucci; Diggs *v.* 1299
Garry *v.* Trane Co. 1194
Gary; United States *v.* 1163,1260
Gear *v.* Wisconsin State Legislature 1039
Georgia; Florida *v.* 908
Georgia Secretary of State; Wood *v.* 1166
Ghazavi *v.* Virginia 1118
Gibson; Johnson *v.* 1300
Gish *v.* Newsom 1255
Glick *v.* Guiffrida 904
Gohmert *v.* Pence 1161
Golden, *In re* 911,1138
Golden *v.* United States 1023
Goldman Sachs Group, Inc. *v.* Arkansas Teacher Ret. System . . . 1144
Goodwine *v.* Amtrak 907
Governor of Ariz.; Taebel *v.* 1138
Governor of Cal.; Gish *v.* 1255
Governor of Cal.; Harvest Rock Church, Inc. *v.* 1120,1254
Governor of Cal.; South Bay United Pentecostal Church *v.* 1243
Governor of Colo.; High Plains Harvest Church *v.* 1155
Governor of Ky.; Danville Christian Academy, Inc. *v.* 1156
Governor of Mich.; King *v.* 1166
Governor of Nev.; Calvary Chapel Dayton Valley *v.* 1166
Governor of N. J.; Robinson *v.* 1155
Governor of N. Y.; Agudath Israel of America *v.* 1119
Governor of Tex.; Planned Parenthood Center for Choice *v.* 1232
Grant *v.* Roanoke, Va. 1261
Gray; Jury *v.* 1139
Greer *v.* United States 1162
Greiner *v.* Macomb County, Mich. 1241
Gresham; Arkansas *v.* 1121,1166
Gresham; Azar *v.* 1121,1166
Griffin; Thompson *v.* 1111

Page
Guam *v.* United States 1162
Guiffrida; Glick *v.* 904
Gurrola *v.* Walgreen Co. 1196
Gutierrez *v.* California 1138
Gutierrez *v.* Saenz 1232
Guzman Chavez; Pham *v.* 909
Hadsell *v.* Baskin 1154
Hall *v.* Barr 1111
Hall; Barr *v.* 1111
Hall *v.* Inch 902
Hall; Vickery *v.* 907
Hanna *v.* California 909
Harrell *v.* California 1194
Harrington; Kehano *v.* 1035
Hartke; Waldner *v.* 1138
Harvest Rock Church, Inc. *v.* Newsom 1120,1254
Haskins; Ally Financial Inc. *v.* 1218
Hassid; Cedar Point Nursery *v.* 1094,1122
Hayes *v.* Louisiana 1164
Hayes; Smith *v.* 1147
Heffin *v.* Commissioner 1119
Heghmann, *In re* 1168
Heidari *v.* Barr 1095
Hendrix; Stinson *v.* 990
Henning *v.* United States 908
Henry *v.* United States 908
Henry-Bey *v.* Castro 1194
Henry Schein, Inc. *v.* Archer & White Sales, Inc. 168,909
Hernandez *v.* PNMAC Mortgage Opportunity Fund Investors 1195
Herrera; Kelley *v.* 907
Heyman, *In re* 1261
Higgs; United States *v.* 1207
High Plains Harvest Church *v.* Polis 1155
Hill; Louisiana *v.* 1161
Hill *v.* U. S. District Court 1194
Hilliard *v.* Saul 1086,1166
Hollie *v.* Wilkie 1242
Hollihan *v.* Pennsylvania 905
HollyFrontier Cheyenne Refning *v.* Renewable Fuels Assn. . . 999,1163
Holmes *v.* Becker 1072
Hologic, Inc.; Minerva Surgical, Inc. *v.* 1162
Honn; Robertson *v.* 1138
Hooker *v.* Illinois 1113
Hoon; M. S. *v.* 908

Page
Horton *v.* Methodist University, Inc. 1104
Horton *v.* United States 901
Hotels.com, L. P.; San Antonio, Texas *v.* 1162
House Committee on the Judiciary; Department of Justice *v.* . . 909,1112
Howell, *In re* 1168
HSBC Bank, USA, N. A.; Ames *v.* 1195
Hudson *v.* Lumpkin 1261
Hughes *v.* Northwestern Univ. 909
Huntington Hospital; Oyibo *v.* 1154
Hyun Cho *v.* Select Portfolio Servicing, Inc. 1225
I. *v.* Connecticut 999
I. *v.* M. A. 999
Iancu; Morsa *v.* 1094
IAW; Mam *v.* 1242
Illinois; Hooker *v.* 1113
Illinois; Mrazek *v.* 1154
Illinois; Wanke *v.* 1195
Image Processing Technologies LLC; United States *v.* 990
Immigration and Customs Enforcement *v.* Padilla 1163
Inch; Anderson *v.* 1139
Inch; Cirota *v.* 1071
Inch; Hall *v.* 902
Inch; LaGasse *v.* 1035
Inch; Newson *v.* 1154
Inch; Reilly *v.* 1217
Inch; Smith *v.* 1300
Inch; Wheeler *v.* 1194
Inch; Williams *v.* 990
Ingraham *v.* Florida 1194
Innovation Law Lab; Mayorkas *v.* 1243
Innovation Law Lab; Wolf *v.* 1243
Jackson, *In re* 910
Jackson *v.* Brun 1094
Jackson *v.* Mississippi 1035
Jackson *v.* United States 908,1122
Jackson; Ward *v.* 1166
Jaffe *v.* Sherman 1085
Jaime Jimenez *v.* Davis 1085
Jenkins *v.* Florida Dept. of Corrections 1233
Jenkins *v.* O'Rourke 908
Jernigan *v.* Wilkie 1118
Jha *v.* United States 909
Jimenez *v.* Davis 1035
Johnson, *In re* 1000,1072

Page
Johnson *v.* Gibson 1300
Johnson *v.* Marlar 1195
Johnson *v.* Performant Recovery, Inc. 902
Johnson *v.* Rosen 1207
Johnson *v.* United States 1206
Johnson *v.* Wilson 1113
Jones, *In re* 911,912,1122
Jones *v.* Brumbley 906
Jones *v.* Capiro 1164
Jones *v.* Lamar Co., LLC 1194
Jones; Latimer *v.* 1300
Jones *v.* Louisiana 1164
Jones *v.* Mississippi 908
Jones; Smith *v.* 1300
Jordan; Allen *v.* 1194
Judge; Jackson *v.* 1094
Judge; Johnson *v.* 1300
Judge, Superior Court of Ariz., Cochise Cty; Erickson *v.* 1225
Jung Hyun Cho *v.* Select Portfolio Servicing, Inc. 1225
Jury *v.* Gray 1139
Jysk Bed'n Linen; Dutta-Roy *v.* 1194
Kahele; Evans *v.* 1148
Kandulski; Robinson *v.* 1260
Kannry *v.* Commissioner 1118
Karupaiyan *v.* New York City Dept. of Ed. 1154
Kayer; Shinn *v.* 111
Kehano *v.* Harrington 1035
Keller, *In re* 1123,1261
Kelley; Dunahue *v.* 1138
Kelley *v.* Herrera 907
Kelly *v.* Bishop 1164
Kelly *v.* Pennsylvania 1139,1166
Kelly-Leppert *v.* United States 1148
Kelly Services, Inc.; Smith *v.* 1300
Kennection Installation, LLC; Warren *v.* 1023
Khera; Sameer *v.* 1138
Kilroy, *In re* 1085
King *v.* Whitmer 1166
Kirk *v.* Richardson 1300
Kitchen *v.* BASF 1084
Koch; Rounds *v.* 1195
Koehl, *In re* 910,1154
Koenig; Baptiste *v.* 1164
Kong-Brown; Li Qin *v.* 1154

Page
Kuang-Bao Ou-Young *v.* Roberts 1226
L.; Mahanoy Area School Dist. *v.* 1162
LaFlamme *v.* Lumpkin 1138
LaGasse *v.* Inch 1035
Lamar Co., LLC; Jones *v.* 1194
Lambert *v.* Louisiana 901
Lancaster *v.* Los Angeles, Cal. 1112
Lancaster Cty. Prison; Caterbone *v.* 1083,1167
Lange *v.* California 1024,1065,1113,1234
Lan Tu Trinh *v.* Department of Ed. 907
Lan Tu Trinh *v.* Fineman 907
LaRosa; Pidanick *v.* 1149,1218
Latimer *v.* Jones 1300
Lattisaw *v.* District of Columbia 999
Laurent; PricewaterhouseCoopers LLP *v.* 1023
Laux *v.* Mentor Worldwide, LLC 1119
Lavergne *v.* Cain 1195
Lee; Polidi *v.* 1138
Lincoln Cty. Jail; Stringer *v.* 1023
Lingfei Sun *v.* New York, New York 1300
Linsangan *v.* Taijeron 1233
Li Qin *v.* Kong-Brown 1154
Li Qin *v.* 99 Cents Only Stores, LLC 1154
Liverman, *In re* 1104
Livingston *v.* Nebraska 909,1122
Liviz *v.* Supreme Judicial Court of Mass. 1164
Lopez *v.* Costa Mesa Police Dept. 905,1122
Lopez *v.* Newport Beach Police Dept. 905,1122
Lopez; Soro *v.* 901,1113
Lopez *v.* United States 907
Los Angeles, Cal.; Lancaster *v.* 1112
Los Angeles County, Cal.; Smith *v.* 1154
Lotersztain; Witkin *v.* 1195
Louisiana; Hayes *v.* 1164
Louisiana *v.* Hill 1161
Louisiana; Jones *v.* 1164
Louisiana; Lambert *v.* 901
Louisiana; Mayeux *v.* 901
Louisiana; Ruffn *v.* 901
Louisiana State Bd. of Nursing; McQueary-Layne *v.* 1154
Lout *v.* Montana 1085
Lumpkin; Carmell *v.* 902
Lumpkin; Crayton *v.* 1138
Lumpkin; Hudson *v.* 1261

Page
Lumpkin; LaFlamme *v.* 1138
Lumpkin; Matthews *v.* 1233
Lumpkin; Perry *v.* 1226
Lumpkin; Staples *v.* 1196
Lumpkin; Steele *v.* 1300
Lumpkin; Stewart *v.* 1165
Lumpkin; Talkington *v.* 990
Lumpkin; White *v.* 1259
Luquin-Coronel *v.* Rosen 1167
Lussy *v.* Dahood 1196
Lussy *v.* Lussy 1196
Lynn *v.* Brown 1299
Lyons; Boucher *v.* 1261
M. A.; A. I. *v.* 999
Macomb County, Mich.; Greiner *v.* 1241
Mahanoy Area School Dist. *v.* B. L. 1162
Maine Dept. of Health and Human Services; Debera P. *v.* 1121
Malft ano; McAllister *v.* 989
Mam *v.* IAW 1242
Manuel Torres *v.* Trump 905
Marcotte; Weixing Wang *v.* 990
Marcus *v.* Marcus 1023
Markovic *v.* Fishman 1260
Markovic *v.* Rahaman 1260
Marlar; Johnson *v.* 1195
Martinez *v.* United States 1260
Marvel Entertainment, LLC; Bennett *v.* 1138
Marvin, *In re* 1261
Masiz, *In re* 1123
Massachusetts; New Hampshire *v.* 1234
Mathis, *In re* 1113
Matthews *v.* Lumpkin 1233
Matylinsky, *In re* 910
May; Williamson *v.* 1139
Mayeux *v.* Louisiana 901
Mayfeld; Smith *v.* 905
Mayor and City Council of Baltimore; BP p. l. c. *v.* 1161
Mayor and City Council of Baltimore; Cochran *v.* 1262
Mayor and City Council of Baltimore; Yang Mei *v.* 1242
Mayorkas *v.* Innovation Law Lab 1243
McAllister *v.* Malft ano 989
McClung *v.* Estevez 1261
McColm *v.* California 904
McCoy *v.* Alamu 1259

Page
McDonald; Shove *v.* 904
McGill *v.* United States 1094
McIntyre; Rodgers *v.* 1138
McKay; Rynn *v.* 1148
McKenzie, *In re* 1085
Mckesson *v.* Doe 1
McNeal *v.* Fleming 1194
McQueary-Layne *v.* Louisiana State Bd. of Nursing 1154
McWhorter *v.* United States 1300
Mei *v.* Mayor and City Council of Baltimore 1242
Mentor Worldwide, LLC; Laux *v.* 1119
Mercer *v.* Vega 1195
Merrill, *In re* 1072
Merrill, Ala. Secretary of State *v.* People First of Ala. 1035
Methodist University, Inc.; Horton *v.* 1104
Meyer; Rangel *v.* 1164
Miami-Dade County, Fla.; Driessen *v.* 1121
Michael, *In re* 1168
Michigan Attorney Grievance Comm'n; Ward *v.* 1154
Middleton; Andino *v.* 906
Miller *v.* Deal 1300
Miller *v.* Phillips 1300
Mine; Allen *v.* 1138
Minerva Surgical, Inc. *v.* Hologic, Inc. 1162
Ming Dai; Rosen *v.* 1218
Minh Van Truong; Tan Phan *v.* 1118
Mississippi; Jackson *v.* 1035
Mississippi; Jones *v.* 908
Mississippi *v.* Tennessee 1121
Mitchell *v.* Dakota County Social Services 1260
Mnuchin *v.* Collins 1084
Mnuchin; Collins *v.* 1084
Mnuchin *v.* Confederated Tribes of the Chehalis Reservation . . . 1163
Mohammed, *In re* 910,1023
Monds *v.* United States 990
Montana; Lout *v.* 1035
Montana *v.* Washington 908
Montano, *In re* 1242
Montano *v.* Oakland County Circuit Court Judge 1242
Montano *v.* Wimmer 1242
Montgomery; Rosen *v.* 1206
Montgomery; United States *v.* 1206
Montgomery *v.* Watson 1206
Moore, *In re* 910,1154

Page
Moore; Allen *v.* 1154
Moore *v.* Circosta 1065
Moore *v.* United States 1161
Morabito *v.* New York 1118
Morsa *v.* Iancu 1094
Moynihan *v.* West Chester Area School Dist. 1167
Mrazek *v.* Illinois 1154
M. S. *v.* Hoon 908
Mulcahy *v.* Aspen Pitkin County Housing Authority 1194
Muniz; Risenhoover *v.* 1299
Murphy; Robinson *v.* 1155
Myers *v.* Myers 1195
Narayan *v.* Prasad 1300
National Assn. of Broadcasters *v.* Prometheus Radio Project . . . 1162
National Collegiate Athletic Assn. *v.* Alston 1156,1166
National Security Agency; Caterbone *v.* 902,1104
National Urban League; Ross *v.* 994
Nebraska; Livingston *v.* 909,1122
Nestlé USA, Inc. *v.* Doe 1072
Netf ix, Inc.; Whitehead *v.* 908
New Hampshire *v.* Massachusetts 1234
New Jersey; PennEast Pipeline Co., LLC *v.* 1243
New Mexico; Texas *v.* 98,1085,1113
Newport Beach Police Dept.; Lopez *v.* 905,1122
Newsom; Gish *v.* 1255
Newsom; Harvest Rock Church, Inc. *v.* 1120,1254
Newsom; South Bay United Pentecostal Church *v.* 1243
Newson *v.* Inch 1154
New York; Department of Homeland Security *v.* 1262
New York; Morabito *v.* 1118
New York; Trump *v.* 125,1022,1112
New York City Dept. of Ed.; Karupaiyan *v.* 1154
New York, New York; Lingfei Sun *v.* 1300
New York State Offce of Children and Family Services; Sykes *v.* 1023
Nguyen Vu *v.* Pennsylvania 1148
99 Cents Only Stores, LLC; Li Qin *v.* 1154
N'Jai, *In re* 1023
North Carolina; Smith *v.* 1225
North Carolina; Tyler *v.* 1022
North Carolina State Bd. of Elections; Berger *v.* 1071
Northwestern Univ.; Hughes *v.* 909
O. *v.* District of Columbia 908
Oakland County Circuit Court Judge; Montano *v.* 1242
Oberwise, *In re* 1023

Page
O'Connor; Pelmear *v.* 1094
Offce of Disciplinary Counsel; Dubin *v.* 1121
Oklahoma; Christian *v.* 1148,1217
Oklahoma; Wilson *v.* 901
Oklahoma; Yerton *v.* 1111
Olan *v.* United States 1163
Oliver *v.* Oliver 1138
Oliver; Oliver *v.* 1138
Omaha School Dist.; Richardson *v.* 1166
Ononuju *v.* Virginia 990
Oregon *v.* Cochran 1262
O'Rourke; Jenkins *v.* 908
Osornio, *In re* 1104
Oyibo *v.* Huntington Hospital 1154
P. *v.* Maine Dept. of Health and Human Services 1121
Padilla; Immigration and Customs Enforcement *v.* 1163
Pakenham; Dawson *v.* 1139
Palomar-Santiago; United States *v.* 1163,1260
Palumbo *v.* United States 906,1148
Patti, *In re* 1261
Payne; Pinney *v.* 1154
Pearson, *In re* 1167,1255
Pecina *v.* Wilkie 1118
Pelletier, *In re* 1261
Pelmear *v.* O'Connor 1094
Pence; Gohmert *v.* 1161
PennEast Pipeline Co., LLC *v.* New Jersey 1243
Pennsylvania; Donahue *v.* 904,1085
Pennsylvania; Hollihan *v.* 905
Pennsylvania; Kelly *v.* 1139,1166
Pennsylvania; Nguyen Vu *v.* 1148
Pennsylvania; Texas *v.* 1144
People First of Ala.; Merrill, Ala. Secretary of State *v.* 1035
Pepke *v.* United States 1194
Performant Recovery, Inc.; Johnson *v.* 902
Perry *v.* Lumpkin 1226
Petrano *v.* Baylor 1300
Pham *v.* Guzman Chavez 909
Pham *v.* Ragbir 901
Phan *v.* Minh Van Truong 1118
Pharmaceutical Care Management Assn.; Rutledge *v.* 80
Pharmaceutical Care Management Assn.; Wilke *v.* 1259
Philadelphia Law Dept.; Polites *v.* 1260
Philadelphia, Pa.; Fulton *v.* 908

Page
Philbrick; Azar *v.* 1121
Philipp; Federal Republic of Germany *v.* 169,1084
Phillips; Miller *v.* 1300
Pidanick *v.* LaRosa 1149,1218
Pinney *v.* Payne 1154
Planned Parenthood Center for Choice *v.* Abbott 1232
PNMAC Mortgage Opportunity Fund Investors; Hernandez *v.* . . 1195
Polidi *v.* Lee 1138
Polis; High Plains Harvest Church *v.* 1155
Polites *v.* Philadelphia Law Dept. 1260
Poppell; Francisco Vega *v.* 1083
Prasad; Narayan *v.* 1300
Preczewski; Uzuegbunam *v.* 1121
Premier Rehab Keller, P. L. L. C.; Cummings *v.* 1072
President of United States *v.* California 1024,1234,1243
President of United States *v.* Citizens for Responsibility 1233
President of United States *v.* District of Columbia 1233
President of United States; Manuel Torres *v.* 905
President of United States *v.* New York 125,1022,1112
President of United States *v.* San Jose, Cal. 1160
President of United States *v.* Sierra Club 1024,1234,1243
President of United States *v.* Useche 1161
President of United States; Weidrick *v.* 1154
Presiding Judge, Okla. Court of Criminal Appeals; White *v.* 1259
Presidio Bank; Arunachalam *v.* 903
PricewaterhouseCoopers LLP *v.* Laurent 1023
Prometheus Radio Project; Federal Communications Comm'n *v.* 1162
Prometheus Radio Project; National Assn. of Broadcasters *v.* . . . 1162
Pugh *v.* Deloach 1195
Qin *v.* Kong-Brown 1154
Qin *v.* 99 Cents Only Stores, LLC 1154
Raffensperger; Wood *v.* 1166
Ragbir; Pham *v.* 901
Raghubir, *In re* 1168
Rahaman; Markovic *v.* 1260
Railroad Retirement Bd.; Salinas *v.* 188
Raively *v.* Whelihan 1218
Ramirez; TransUnion LLC *v.* 1156
Ramsey, *In re* 1149
Rangel *v.* Meyer 1164
Ranteesi *v.* Arnold 1071
Raymond *v.* U. S. District Court 1194
Real, U. S. District Judge; Sanchez *v.* 1118
Reeves *v.* Esper 1154

Page
Reilly *v.* Inch 1217
Renewable Fuels Assn.; HollyFrontier Cheyenne Ref ning *v.* . . 999,1163
Republican Party of Pa. *v.* Boockvar 1023,1068
Republic of Hungary *v.* Simon 207,1085
Rewerts; Burnside *v.* 1195
Rheinstein *v.* Attorney Grievance Comm'n of Md. 1139
Richards, *In re* 1167
Richardson, *In re* 1149
Richardson; Kirk *v.* 1300
Richardson *v.* Omaha School Dist. 1166
Riley *v.* Delaware 1165
Riojas; Taylor *v.* 7
Risenhoover *v.* Muniz 1299
Rith *v.* United States 907
Rizk *v.* Defense Finance and Accounting Service 1195
Roanoke, Va.; Grant *v.* 1261
Robert R. McCormick Found.; Deutsche Bank Trust Co. *v.* . . . 909,1120
Roberts; Kuang-Bao Ou-Young *v.* 1226
Roberts; Yi Tai Shao *v.* 1147
Robertson *v.* Honn 1138
Robinson *v.* Kandulski 1260
Robinson *v.* Murphy 1155
Robles *v.* Wilkie 1022,1167
Rodgers *v.* McIntyre 1138
Romain, *In re* 1167,1168,1261
Roman Catholic Diocese of Brooklyn *v.* Cuomo 14
Rope, *In re* 1000,1195
Rosado-Sanchez *v.* Banco Santander Puerto Rico 1139
Rose *v.* Department of Justice 1023
Rosen *v.* Alcaraz-Enriquez 1218
Rosen; Johnson *v.* 1207
Rosen; Luquin-Coronel *v.* 1167
Rosen *v.* Ming Dai 1218
Rosen *v.* Montgomery 1206
Ross *v.* National Urban League 994
Rounds *v.* Koch 1195
Routten *v.* Routten 1300
Rovi Guides, Inc.; Comcast Cable Communications, LLC *v.* 1120
Rudolph *v.* United States 990
Ruff n *v.* Louisiana 901
Rumzis *v.* Saul 1023
Rutledge *v.* Pharmaceutical Care Management Assn. 80
Ruttkamp *v.* Bank of New York Mellon 1299
R. W. *v.* Dauphin County Social Services for Children and Youth 1194

Page
Rynn *v.* McKay 1148
S. *v.* Hoon 908
Sachs *v.* Bank of America, N. A. 1195
Saenz; Gutierrez *v.* 1232
Safford *v.* Florida 907
St. Hubert *v.* United States 1194
Salahuddin *v.* Shinn 1138
Salinas *v.* Railroad Ret. Bd 188
Sameer *v.* Khera 1138
San Antonio, Tex. *v.* Hotels.com, L. P. 1162
Sanchez *v.* Real, U. S. District Judge 1118
Sanchez *v.* Wolf 1162
Sancho *v.* Ebner Family Trust 902
Sanders *v.* Foster 1148,1261
Sanderson *v.* Foley 1195
San Jose, Cal.; Trump *v.* 1160
SAP America, Inc.; Arunachalam *v.* 903
Sarhan, *In re* 911
Satterfeld, *In re* 1104
Saul; Atkins *v.* 1119
Saul; Carr *v.* 1166
Saul; Davis *v.* 1086,1166
Saul; Hilliard *v.* 1166
Saul; Rumzis *v.* 1023
Sayed *v.* Williams 1095
Scarborough *v.* Court of Common Pleas of Pa., Northampton Cty. 1111
Scarnati *v.* Boockvar 1022
Schiff, *In re* 1123
Scyphers *v.* Washington 1195
Seadin *v.* Williams 1300
Sealed Appellant *v.* Sealed Appellee 1084
Sealed Appellee; Sealed Appellant *v.* 1084
Secretary, Fla. Dept. of Children and Families; Francisco Vega *v.* 1083
Secretary of Commerce *v.* National Urban League 994
Secretary of Defense; Reeves *v.* 1154
Secretary of Health and Human Servs. *v.* Gresham 1126,1166
Secretary of Health and Human Servs *v.* Philbrick 1121,1166
Secretary of Homeland Security *v.* Innovation Law Lab 1243
Secretary of penal or correctional institution. See name or title of secretary.
Secretary of Pa.; Donald J. Trump for President, Inc. *v.* 1167
Secretary of Pa.; Republican Party of Pa. *v.* 1023,1068
Secretary of Pa.; Scarnati *v.* 1022
Secretary of Treasury *v.* Collins 1084

Page
Secretary of Treasury; Collins *v.* 1084
Secretary of Treasury *v.* Confederated Tribes 1163
Secretary of Veterans Affairs; Hollie *v.* 1242
Secretary of Veterans Affairs; Jernigan *v.* 1118
Secretary of Veterans Affairs; Pecina *v.* 1118
Secretary of Veterans Affairs; Robles *v.* 1022,1167
Secretary of Veterans Affairs; Smith *v.* 1242
Seidman *v.* Weiler 1260
Select Portfolio Servicing, Inc.; Jung Hyun Cho *v.* 1225
Sepehry-Fard *v.* Court of Appeal of Cal., Sixth App. Dist. . . . 1233,1259
Shah, *In re* 1218
Shahin, *In re* 911
Shao *v.* Roberts 1147
Shaw *v.* United States 1021
Shawn *v.* Eighth Judicial District Court of Nev., Clark Cty. 1300
Shepard *v.* Department of Veterans Affairs 1218
Sherer *v.* United States 907
Sherman; Jaffe *v.* 1021
Shinn *v.* Kayer 111
Shinn; Salahuddin *v.* 1138
Shiomoto; Diggs *v.* 1299
Shong-Ching Tong *v.* Superior Court of Cal., Los Angeles Cty. 1164
Shove *v.* McDonald 904
Shumake *v.* Virginia 1194
Sierra Club; Biden *v.* 1234
Sierra Club; Trump *v.* 1024
Simon; Republic of Hungary *v.* 207,1084
Simpson *v.* Court of Common Pleas of Ohio, Hamilton Cty. . . 1022,1149
Sims, *In re* 910
Singhderewa *v.* Superior Court of Cal., Los Angeles Cty. 1218
Sisolak; Calvary Chapel Dayton Valley *v.* 1166
Skidmore *v.* Zeppelin 1139
Slatery *v.* Adams & Boyle, P. C. 1233
Smiles *v.* Berks County, Pa. 1138
Smith, *In re* 910,1261
Smith *v.* Dobin 1123
Smith; Dunn *v.* 1255,1258
Smith *v.* Hayes 1147
Smith *v.* Inch 1300
Smith *v.* Jones 1300
Smith *v.* Kelly Services, Inc. 1300
Smith *v.* Los Angeles Cty., Cal. 1154
Smith *v.* Mayfeld 905

Page
Smith *v.* North Carolina 1225
Smith; Twitty *v.* 1194
Smith *v.* United States Parole Comm'n 1113
Smith *v.* Warden, Federal Correctional Institution Beaumont . . . 1300
Smith *v.* Wilkie 1242
Smith & Nephew, Inc. *v.* Arthrex, Inc. 1000,1085,1165
Smith & Nephew, Inc.; Arthrex, Inc. *v.* 1000,1085,1166
Smith-Weeks *v.* United States Parole Comm'n 1113
S. O. *v.* District of Columbia 908
Solon City School Dist.; Chukwuani *v.* 1195
Soro *v.* Lopez 901,1113
South Bay United Pentecostal Church *v.* Newsom 1243
Sowell *v.* Tinley, Renehan & Dost, LLP 1195
Spaulding, *In re* 911
Spencer, *In re* 910
Staples *v.* Lumpkin 1196
Starling, *In re* 911,1196
State Bar of Cal.; Bowell *v.* 1111
Steele *v.* Lumpkin 1300
Stefanyuk *v.* United States 1195
Stewart *v.* Lumpkin 1165
Stewart; Waters *v.* 989
Stinson *v.* Hendrix 990
Stolle; Dobson *v.* 1195
Stone, *In re* 1072
Stone *v.* Centene Corp. 1094
Storms; Woods *v.* 1195
Stringer *v.* Lincoln Cty. Jail 1023
Strom; Caniglia *v.* 1112
Strother, *In re* 910
Stubblefeld *v.* Brown 1139
Sun *v.* New York, New York 1300
Sundy, *In re* 911
Sundy *v.* Friendship Pavilion Acquisition Co., LLC 994,1071
Superintendent of penal or correctional institution. See name or title of superintendent.
Superior Ct. of Cal., Los Angeles Cty.; Shong-Ching Tong *v.* 1164
Superior Ct. of Cal., Los Angeles Cty.; Singhderewa *v.* 1218
Supreme Judicial Court of Mass.; Liviz *v.* 1164
Swarthout; Borden *v.* 1196
Swenson *v.* Wisconsin State Legislature 1039
Sykes *v.* New York State Offce of Children and Family Services 1023
Taebel *v.* Ducey 1138
Taijeron; Linsangan *v.* 1233

Page
Tai Shao *v.* Roberts 1147
Talbert, *In re* 910
Talkington *v.* Lumpkin 990
Talley *v.* U. S. District Court 1164
Tanamor-Steffan, *In re* 1167
Tan Phan *v.* Minh Van Truong 1118
Tanvir; Tanzin *v.* 43
Tanzin *v.* Tanvir 43
Taylor *v.* Riojas 7
Telfair, *In re* 1113
Tennessee; Mississippi *v.* 1121
Territory. See name of Territory.
Terry *v.* United States 1163,1261
Texas; Calton *v.* 904
Texas *v.* New Mexico 98,1072,1113
Texas *v.* Pennsylvania 1144
Texas; Ysleta del Sur Pueblo *v.* 1261
Texas Workforce Comm'n; Cox *v.* 1154
Thomas *v.* Corbett 1021
Thomas *v.* United States 1260
Thomas More Law Center *v.* Becerra 1162
Thompson *v.* Cattail Creek Community Assn. 907
Thompson *v.* Griffin 1111
Thorpe *v.* Dumas 1194
Tichenor; Coultas *v.* 1299
Timbes *v.* Deutsche Bank National Trust Co. 1084
Tinley, Renehan & Dost, LLP; Sowell *v.* 1195
TMC Transportation; Ellerbee *v.* 1139
Tona *v.* Superior Court of Cal., Los Angeles Cty. 1164
Torres *v.* Trump 905
Total Visa; Allen *v.* 1138
Trane Co.; Garry *v.* 1194
TransUnion LLC *v.* Ramirez 1156
Treantos *v.* United States 1112
Tri-Lift North Carolina, Inc.; Allen *v.* 1195
Trinh *v.* Department of Ed. 907
Trinh *v.* Fineman 907
True; Crosby *v.* 1083,1165
Trump *v.* Biden 1167
Trump *v.* California 1024
Trump *v.* Citizens for Responsibility and Ethics in Wash. 1233
Trump *v.* Dist. of Columbia 1233
Trump; Manuel Torres *v.* 905
Trump *v.* New York 125,1022,1112

Page
Trump *v.* San Jose, Cal. 1160
Trump *v.* Sierra Club 1024
Trump *v.* Useche 1161
Trump *v.* Vance 1260
Trump; Weidrick *v.* 1154
Trump *v.* Wisconsin Elections Comm'n 1167
Truong; Tan Phan *v.* 1118
Tu Trinh *v.* Department of Ed. 907
Tu Trinh *v.* Fineman 907
Twitty *v.* Smith 1194
Tyler *v.* North Carolina 1022
Ukpai *v.* Continental Automotive Systems US, Inc. 1154
Underwood, *In re* 910
United States *v.* Briggs 69
United States *v.* Collins 69
United States *v.* Daniels 69
U. S. Congressman; Jafte *v.* 1021
U. S. Congressman *v.* Pennsylvania 1139,1166
U. S. District Court; Banks *v.* 903
U. S. District Court; Hill *v.* 1194
U. S. District Court; Raymond *v.* 1194
U. S. District Court; Talley *v.* 1164
U. S. District Court; Vinkov *v.* 1165
U. S. District Court; Wilkins *v.* 1195
United States Parole Comm'n; Smith *v.* 1113
Useche; Trump *v.* 1161
Uttecht; Allred *v.* 1242
Uzuegbunam *v.* Preczewski 1121
Valentine *v.* Collier 1095
Van Auken *v.* Catron 1138
Vance *v.* Buchanan 1195
Vance; Trump *v.* 1260
Vannoy; Edwards *v.* 1023
Van Truong; Tan Phan *v.* 1118
Vega; Mercer *v.* 1195
Vega *v.* Poppell 1083
Viamedia, Inc.; Comcast Corp. *v.* 1122
Vice President of United States; Gohmert *v.* 1161
Vickery *v.* Hall 907
Vinkov *v.* U. S. District Court 1165
Virginia; Ghazavi *v.* 1118
Virginia; Ononuju *v.* 990
Virginia; Shumake *v.* 1194
Vu *v.* Pennsylvania 1148

Page
W. *v.* Dauphin County Social Services for Children and Youth . . . 1194
Waldner *v.* Hartke . . . 1138
Walgreen Co.; Gurrola *v.* . . . 1196
Walrath; Cameron *v.* . . . 1217
Walton *v.* First Merchant's Bank . . . 1139
Wang *v.* Marcotte . . . 990
Wanke *v.* Illinois . . . 1195
Ward, *In re* . . . 1000
Ward *v.* Jackson . . . 1166
Ward *v.* Michigan Attorney Grievance Comm'n . . . 1154
Warden. See name of warden.
Warden, Federal Correctional Institution Beaumont; Smith *v.* . . . 1300
Warren *v.* Kennection Installation, LLC . . . 1023
Washington *v.* Bonds . . . 907
Washington; Montana *v.* . . . 908
Washington; Scyphers *v.* . . . 1195
Washington Metropolitan Area Transit Authority; Woods *v.* . . . 1111
Waters *v.* Stewart . . . 989
Watkins, *In re* . . . 1000
Watson; Day *v.* . . . 904
Watson; Montgomery *v.* . . . 1206
Weidrick *v.* Trump . . . 1154
Weiler; Seidman *v.* . . . 1260
Weissert, *In re* . . . 1072
Weixing Wang *v.* Marcotte . . . 990
Wells Fargo Bank, N. A.; Arunachalam *v.* . . . 902
Wells Fargo Bank, N. A.; Berry *v.* . . . 1261
Wells Fargo Bank, N. A.; Yazdchi *v.* . . . 1260
West Chester Area School Dist.; Moynihan *v.* . . . 1167
West Va.; Azeez *v.* . . . 1242
Wheeler *v.* Inch . . . 1194
Whelihan; Raively *v.* . . . 1218
White *v.* Lumpkin . . . 1259
Whitehead *v.* Netfix, Inc. . . . 908
Whitmer; King *v.* . . . 1166
Wilcox, *In re* . . . 1104
Wilke *v.* Pharmaceutical Care Management Assn. . . . 1259
Wilkie; Hollie *v.* . . . 1242
Wilkie; Jernigan *v.* . . . 1118
Wilkie; Pecina *v.* . . . 1118
Wilkie; Robles *v.* . . . 1022,1167
Wilkie; Smith *v.* . . . 1242
Wilkins *v.* U. S. District Court . . . 1195
Wilkinson; Francois *v.* . . . 1226

Page
Williams, *In re* 1000
Williams *v.* Duffy 1138
Williams *v.* Inch 990
Williams; Sayed *v.* 1095
Williams; Seadin *v.* 1300
Williamson *v.* May 1139
Wilson *v.* Florida 1071,1167
Wilson; Johnson *v.* 1113
Wilson *v.* Oklahoma 901
Wilson *v.* Wisconsin 1138
Wimmer; Montano *v.* 1242
Wisconsin; Wilson *v.* 1138
Wisconsin Elections Comm'n; Trump *v.* 1167
Wisconsin State Legislature; Democratic National Committee *v.* 1039
Wisconsin State Legislature; Gear *v.* 1039
Wisconsin State Legislature; Swenson *v.* 1039
Wise *v.* Circosta 1066
Witkin *v.* Lotersztain 1195
Wolf, *In re* 910,1154
Wolf *v.* Innovation Law Lab 1024
Wolf; Sanchez *v.* 1162
Womack *v.* Finkelstein 1138
Wood *v.* Raffensperger 1166
Wooden *v.* United States 1262
Woods, *In re* 1168
Woods *v.* Storms 1195
Woods *v.* Washington Metropolitan Area Transit Authority 1111
Woolsey-Ross, *In re* 911
Wren, *In re* 1104
Wright, *In re* 909,1085,1234
Yang Mei *v.* Mayor and City Council of Baltimore 1242
Yazdchi *v.* Wells Fargo Bank, N. A. 1260
Ybarra, *In re* 910,1139
Yerton *v.* Oklahoma 1111
Yi Tai Shao *v.* Roberts 1147
Young, *In re* 911,1154
YoungBear, *In re* 910
Ysleta del Sur Pueblo *v.* Texas 1261
Zeppelin; Skidmore *v.* 1139
Zimmer, *In re* 910
Zimmermann, *In re* 1123

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2020

MCKESSON *v.* DOE

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

No. 19–1108. Decided November 2, 2020

Petitioner DeRay Mckesson organized a demonstration at a Baton Rouge police station to protest a shooting. The protest spread to a highway in front of the police station, and an unidentifed protester threw an object that struck respondent Offcer Doe in the face, causing him devastating injuries. Offcer Doe sought to recover damages from Mckesson under Louisiana law on the theory that Mckesson negligently staged the protest that resulted in the assault. The District Court dismissed Doe's negligence claim as barred by the First Amendment, but a divided Fifth Circuit panel reversed. While recognizing that Louisiana law generally imposes no duty to protect others from the criminal activities of third persons, the panel majority held that a jury could plausibly f nd that Mckesson breached his "duty not to negligently precipitate the crime of a third party" because "a violent confrontation with a police offcer was a foreseeable effect of negligently directing a protest" onto the highway. 945 F. 3d 818, 827. The panel majority also rejected Mckesson's argument that *NAACP* v. *Claiborne Hardware Co.*, 458 U. S. 886, forbids liability for speech-related activity that negligently causes a violent act unless the defendant specifca lly intended that result. Because Mckesson allegedly directed an unlawful obstruction of a highway, the Fifth Circuit held that the First Amendment did not shield Mckesson from liability for the downstream consequences.

Per Curiam

Held: The question presented—whether the theory of state tort liability adopted by the Fifth Circuit violates the First Amendment—turns on novel questions of state law that the Fifth Circuit should have certifed to the Louisiana Supreme Court. Mckesson contends that his role in leading the protest onto the highway, even if negligent, cannot make him personally liable for the violent act of an individual whose only association with him was attendance at the protest. This undeniably important constitutional issue is implicated only if Louisiana law permits recovery under these circumstances. The dispute thus could be "greatly simplife[d]" by guidance from the Louisiana Supreme Court on the meaning of Louisiana law. *Bellotti* v. *Baird*, 428 U. S. 132, 151. The Rules of the Louisiana Supreme Court permit federal courts to certify dispositive questions of Louisiana law for resolution. La. Sup. Ct. Rule 12, §§ 1–2. While certifcati on in the face of unsettled state law is discretionary, *Lehman Brothers* v. *Schein*, 416 U. S. 386, 391, certifcati on is advisable before addressing a constitutional issue in an exceptional case like this one, see *Bellotti*, 428 U. S., at 151, for two reasons. First, the dispute presents novel issues of state law peculiarly calling for the exercise of judgment by the state courts. See *Lehman Brothers*, 416 U. S., at 391. Second, certifcati on would ensure that any conf ict in this case between state law and the First Amendment is not purely hypothetical. The Fifth Circuit should not have ventured into so uncertain an area of tort law—one laden with value judgments and fraught with implications for First Amendment rights—without frst seeking guidance on potentially controlling Louisiana law from the Louisiana Supreme Court.

Certiorari granted; 945 F. 3d 841, vacated and remanded.

PER CURIAM.

Petitioner DeRay Mckesson organized a demonstration in Baton Rouge, Louisiana, to protest a shooting by a local police offcer. The protesters, allegedly at Mckesson's direction, occupied the highway in front of the police headquarters. As offcers began making arrests to clear the highway, an unknown individual threw a "piece of concrete or a similar rock-like object," striking respondent Offcer Doe in the face. 945 F. 3d 818, 823 (CA5 2019). Offcer Doe suffered devastating injuries in the line of duty, including loss of teeth and brain trauma.

Though the culprit remains unidentified, Officer Doe sought to recover damages from Mckesson on the theory that

he negligently staged the protest in a manner that caused the assault. The District Court dismissed the negligence claim as barred by the First Amendment. 272 F. Supp. 3d 841, 847–848 (MD La. 2017).

A divided panel of the Court of Appeals for the Fifth Circuit reversed. As the Fifth Circuit recognized at the outset, Louisiana law generally imposes no "`duty to protect others from the criminal activities of third persons.'" 945 F. 3d, at 827 (quoting *Posecai* v. *Wal-Mart Stores, Inc.*, 1999–1222, p. 5 (La. 11/30/99), 752 So. 2d 762, 766). But the panel majority held that a jury could plausibly f nd that Mckesson breached his "duty not to negligently precipitate the crime of a third party" because "a violent confrontation with a police offcer was a foreseeable effect of negligently directing a protest" onto the highway. 945 F. 3d, at 827. The dissent would have demanded something more—a "special relationship" between Mckesson and Offcer Doe—before recognizing such a duty under Louisiana law. *Id.*, at 836–838, and n. 11 (Willett, J., concurring in part and dissenting in part). The dissent likewise doubted that an intentional assault is the "particular risk" for which Offcer Doe could recover for a breach of "Louisiana's prohibitions on highway-blocking," which "have as their focus the protection of other motorists." *Id.*, at 844, n. 56 (internal quotation marks omitted).

The panel majority also rejected Mckesson's argument that *NAACP* v. *Claiborne Hardware Co.*, 458 U. S. 886 (1982), forbids liability for speech-related activity that negligently causes a violent act unless the defendant specifca lly intended that the violent act would result. According to the Fifth Circuit, the First Amendment imposes no barrier to tort liability so long as the rock-throwing incident was "one of the `consequences' of `tortious activity,' which itself was `authorized, directed, or ratifed' by Mckesson in violation of his duty of care." 945 F. 3d, at 829 (quoting *Claiborne Hardware*, 458 U. S., at 927). Because Mckesson allegedly directed an unlawful obstruction of a highway, see La. Rev. Stat. Ann. § 14:97 (West 2018), the Fifth Circuit held that the

First Amendment did not shield him from liability for the downstream consequences. 945 F. 3d, at 829. Again, the dissent disagreed, deeming the "novel `negligent protest' theory of liability" to be "incompatible with the First Amendment and foreclosed—squarely—by" *Claiborne Hardware*. 945 F. 3d, at 842 (opinion of Willett, J.).

The Fifth Circuit subsequently deadlocked 8 to 8 on Mckesson's petition for rehearing en banc. 947 F. 3d 874, 875 (2020) (*per curiam*). Members of the Court of Appeals wrote separately to express further disagreement with both the panel decision's interpretation of state law, *id.*, at 879 (Higginson, J., dissenting from denial of rehearing en banc), and its application of *Claiborne Hardware*, 947 F. 3d, at 878 (Dennis, J., dissenting from denial of rehearing en banc).

The question presented for our review is whether the theory of personal liability adopted by the Fifth Circuit violates the First Amendment. When violence occurs during activity protected by the First Amendment, that provision mandates "precision of regulation" with respect to "the grounds that may give rise to damages liability" as well as "the persons who may be held accountable for those damages." *Claiborne Hardware*, 458 U. S., at 916–917 (internal quotation marks omitted). Mckesson contends that his role in leading the protest onto the highway, even if negligent and punishable as a misdemeanor, cannot make him personally liable for the violent act of an individual whose only association with him was attendance at the protest.

We think that the Fifth Circuit's interpretation of state law is too uncertain a premise on which to address the question presented. The constitutional issue, though undeniably important, is implicated only if Louisiana law permits recovery under these circumstances in the frst place. The dispute thus could be "greatly simplife[d]" by guidance from the Louisiana Supreme Court on the meaning of Louisiana law. *Bellotti* v. *Baird*, 428 U. S. 132, 151 (1976).

Fortunately, the Rules of the Louisiana Supreme Court, like the rules of 47 other States, provide an opportunity to

obtain such guidance. In the absence of "clear controlling precedents in the decisions of the" Louisiana Supreme Court, those Rules specify that the federal courts of appeals may certify dispositive questions of Louisiana law on their own accord or on motion of a party. La. Sup. Ct. Rule 12, §§ 1–2 (2019). Certifcati on is by no means "obligatory" merely because state law is unsettled; the choice instead rests "in the sound discretion of the federal court." *Lehman Brothers* v. *Schein*, 416 U. S. 386, 391 (1974). Federal courts have only rarely resorted to state certifcati on procedures, which can prolong the dispute and increase the expenses incurred by the parties. See *id.*, at 394–395 (Rehnquist, J., concurring). Our system of "cooperative judicial federalism" presumes federal and state courts alike are competent to apply federal and state law. *Id.*, at 391 (opinion of the Court); cf. *Tafflin* v. *Levitt*, 493 U. S. 455, 465 (1990).

In exceptional instances, however, certifcati on is advisable before addressing a constitutional issue. See *Bellotti*, 428 U. S., at 151; *Clay* v. *Sun Ins. Office Ltd.*, 363 U. S. 207, 212 (1960). Two aspects of this case, taken together, persuade us that the Court of Appeals should have certifed to the Louisiana Supreme Court the questions (1) whether Mckesson could have breached a duty of care in organizing and leading the protest and (2) whether Offcer Doe has alleged a particular risk within the scope of protection afforded by the duty, provided one exists. See 945 F. 3d, at 839 (opinion of Willett, J.).

First, the dispute presents novel issues of state law peculiarly calling for the exercise of judgment by the state courts. See *Lehman Brothers*, 416 U. S., at 391. To impose a duty under Louisiana law, courts must consider "various moral, social, and economic factors," among them "the fairness of imposing liability," "the historical development of precedent," and "the direction in which society and its institutions are evolving." *Posecai*, 752 So. 2d, at 766. "Speculation by a federal court about" how a state court would weigh, for instance, the moral value of protest against the

economic consequences of withholding liability "is particularly gratuitous when the state courts stand willing to address questions of state law on certifcati on." *Arizonans for Official English* v. *Arizona*, 520 U. S. 43, 79 (1997) (internal quotation marks and alteration omitted).

Second, certifcati on would ensure that any conf ict in this case between state law and the First Amendment is not purely hypothetical. The novelty of the claim at issue here only underscores that "[w]arnings against premature adjudication of constitutional questions bear heightened attention when a federal court is asked to invalidate a State's law." *Ibid.* The Louisiana Supreme Court, to be sure, may announce the same duty as the Fifth Circuit. But under the unusual circumstances we confront here, we conclude that the Fifth Circuit should not have ventured into so uncertain an area of tort law—one laden with value judgments and fraught with implications for First Amendment rights—without frst seeking guidance on potentially controlling Louisiana law from the Louisiana Supreme Court. We express no opinion on the propriety of the Fifth Circuit certifying or resolving on its own any other issues of state law that the parties may raise on remand.

We therefore grant the petition for writ of certiorari, vacate the judgment of the United States Court of Appeals for the Fifth Circuit, and remand the case to that court for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE BARRETT took no part in the consideration or decision of this case.

JUSTICE THOMAS dissents.

TAYLOR *v.* RIOJAS ET AL.

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

No. 19–1261. Decided November 2, 2020

Petitioner Trent Taylor is an inmate in the custody of the Texas Department of Criminal Justice. Taylor alleges that, for six full days, correctional offcers conf ned him to shockingly unsanitary cells. The Court of Appeals for the Fifth Circuit properly held that such conditions of conf nement violate the Eighth Amendment's prohibition on cruel and unusual punishment. But, based on its assessment that "[t]he law wasn't clearly established" that "prisoners couldn't be housed in cells teeming with human waste" for "only six days," the court concluded that the prison offcia ls responsible for Taylor's conf nement did not have fair warning that their specifc acts were unconstitutional.

Held: The Fifth Circuit erred in granting the offcers qualifed immunity. "Qualifed immunity shields an offcer from suit when she makes a decision that, even if constitutionally defcient, reasonably misapprehends the law governing the circumstances she confronted." *Brosseau* v. *Haugen*, 543 U. S. 194, 198 (*per curiam*). No reasonable correctional offcer could have concluded that, under the extreme circumstances of this case, the Constitution permits conf ning Taylor for six days under the deplorably unsanitary conditions described. See *Hope* v. *Pelzer*, 536 U. S. 730, 741. The Fifth Circuit identifed no evidence that the conditions of Taylor's conf nement were compelled by necessity or exigency, and the record reveals no reason to suspect that the conditions of Taylor's conf nement could not have been mitigated.

Certiorari granted; 946 F. 3d 211, reversed and remanded.

PER CURIAM.

Petitioner Trent Taylor is an inmate in the custody of the Texas Department of Criminal Justice. Taylor alleges that, for six full days in September 2013, correctional offcers conf ned him in a pair of shockingly unsanitary cells.[1] The frst

[1] The Fifth Circuit accepted Taylor's "verifed pleadings [as] competent evidence at summary judgment." *Taylor* v. *Stevens*, 946 F. 3d 211, 221 (2019). As is appropriate at the summary-judgment stage, facts that are

cell was covered, nearly foor to ceiling, in "`massive amounts' of feces": all over the foor, the ceiling, the window, the walls, and even "`packed inside the water faucet.'" *Taylor* v. *Stevens*, 946 F. 3d 211, 218 (CA5 2019). Fearing that his food and water would be contaminated, Taylor did not eat or drink for nearly four days. Correctional offcers then moved Taylor to a second, frigidly cold cell, which was equipped with only a clogged drain in the foor to dispose of bodily wastes. Taylor held his bladder for over 24 hours, but he eventually (and involuntarily) relieved himself, causing the drain to overfow and raw sewage to spill across the foor. Because the cell lacked a bunk, and because Taylor was conf ned without clothing, he was left to sleep naked in sewage.

The Court of Appeals for the Fifth Circuit properly held that such conditions of confinement violate the Eighth Amendment's prohibition on cruel and unusual punishment. But, based on its assessment that "[t]he law wasn't clearly established" that "prisoners couldn't be housed in cells teeming with human waste" "for only six days," the court concluded that the prison offcials responsible for Taylor's conf nement did not have "`fair warning' that their specifc acts were unconstitutional." 946 F. 3d, at 222 (quoting *Hope* v. *Pelzer*, 536 U. S. 730, 741 (2002)).

The Fifth Circuit erred in granting the offcers qualifed immunity on this basis. "Qualifed immunity shields an offcer from suit when she makes a decision that, even if constitutionally defcient, reasonably misapprehends the law governing the circumstances she confronted." *Brosseau* v. *Haugen*, 543 U. S. 194, 198 (2004) (*per curiam*). But no reasonable correctional offcer could have concluded that, under the extreme circumstances of this case, it was constitutionally permissible to house Taylor in such deplorably unsani-

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subject to genuine dispute are viewed in the light most favorable to Taylor's claim.

tary conditions for such an extended period of time. See *Hope*, 536 U. S., at 741 (explaining that "`a general constitutional rule already identifed in the decisional law may apply with obvious clarity to the specifc conduct in question'" (quoting *United States* v. *Lanier*, 520 U. S. 259, 271 (1997))); 536 U. S., at 745 (holding that "[t]he obvious cruelty inherent" in putting inmates in certain wantonly "degrading and dangerous" situations provides offcers "with some notice that their alleged conduct violate[s]" the Eighth Amendment). The Fifth Circuit identifed no evidence that the conditions of Taylor's conf nement were compelled by necessity or exigency. Nor does the summary-judgment record reveal any reason to suspect that the conditions of Taylor's conf nement could not have been mitigated, either in degree or duration. And although an offcer-by-offcer analysis will be necessary on remand, the record suggests that at least some offcers involved in Taylor's ordeal were deliberately indifferent to the conditions of his cells. See, *e. g.*, 946 F. 3d, at 218 (one offcer, upon placing Taylor in the frst feces-covered cell, remarked to another that Taylor was "`going to have a long weekend'"); *ibid.*, and n. 9 (another offcer, upon placing Taylor in the second cell, told Taylor he hoped Taylor would "`f***ing freeze'").

Confronted with the particularly egregious facts of this case, any reasonable offcer should have realized that Taylor's conditions of conf nement offended the Constitution.[2] We therefore grant Taylor's petition for a writ of certiorari, vacate the judgment of the Court of Appeals for the Fifth

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[2] In holding otherwise, the Fifth Circuit noted "ambiguity in the caselaw" regarding whether "a time period so short [as six days] violated the Constitution." 946 F. 3d, at 222. But the case that troubled the Fifth Circuit is too dissimilar, in terms of both conditions and duration of conf nement, to create any doubt about the obviousness of Taylor's right. See *Davis* v. *Scott*, 157 F. 3d 1003, 1004 (1998) (no Eighth Amendment violation where inmate was detained for three days in dirty cell and provided cleaning supplies).

Circuit, and remand the case for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE BARRETT took no part in the consideration or decision of this case.

JUSTICE THOMAS dissents.

JUSTICE ALITO, concurring in the judgment.

Because the Court has granted the petition for a writ of certiorari, I will address the question that the Court has chosen to decide. But I find it hard to understand why the Court has seen fit to grant review and address that question.

I

To see why this petition is ill-suited for review, it is important to review the procedural posture of this case. Petitioner, an inmate in a Texas prison, sued multiple prison officers and asserted a variety of claims, including both the Eighth Amendment claim that the Court addresses (placing and keeping him in filthy cells) and a related Eighth Amendment claim (refusing to take him to a toilet). The District Court granted summary judgment for the defendants on all but one of petitioner's claims under Federal Rule of Civil Procedure 54(b), which permitted petitioner to appeal the dismissed claims. On appeal, the Fifth Circuit affirmed as to all the claims at issue except the toilet-access claim. On the claim concerning the conditions of petitioner's cells, the court held that the facts alleged in petitioner's verified complaint were sufficient to demonstrate an Eighth Amendment violation, but it found that the officers were entitled to qualified immunity based primarily on a statement in *Hutto* v. *Finney*, 437 U. S. 678 (1978), and the Fifth Circuit's decision in *Davis* v. *Scott*, 157 F. 3d 1003 (1998).

The Court now reverses the affirmance of summary judgment on the cell-conditions claim. Viewing the evidence in the summary judgment record in the light most favorable to

petitioner, the Court holds that a reasonable corrections officer would have known that it was unconstitutional to confine petitioner under the conditions alleged. That question, which turns entirely on an interpretation of the record in one particular case, is a quintessential example of the kind that we almost never review. As stated in our Rules, "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law," this Court's Rule 10. That is precisely the situation here. The Court does not dispute that the Fifth Circuit applied all the correct legal standards, but the Court simply disagrees with the Fifth Circuit's application of those tests to the facts in a particular record. Every year, the courts of appeals decide hundreds if not thousands of cases in which it is debatable whether the evidence in a summary judgment record is just enough or not quite enough to carry the case to trial. If we began to review these decisions we would be swamped, and as a rule we do not do so.

Instead, we have well-known criteria for granting review, and they are not met here. The question that the Court decides is not one that has divided the lower courts, see this Court's Rule 10, and today's decision adds virtually nothing to the law going forward. The Court of Appeals held that the conditions alleged by petitioner, if proved, would violate the Eighth Amendment, and this put correctional officers in the Fifth Circuit on notice that such conditions are intolerable. Thus, even without our intervention, qualified immunity would not be available in any similar future case.

We have sometimes granted review and summarily reversed in cases where it appeared that the lower court had conspicuously disregarded governing Supreme Court precedent, but that is not the situation here. On the contrary, as I explain below, it appears that the Court of Appeals erred largely because it read too much into one of our decisions.

It is not even clear that today's decision is necessary to protect petitioner's interests. We are generally hesitant to grant review of non-final decisions, and there are grounds for

such wariness here. If we had denied review at this time, petitioner may not have lost the opportunity to contest the grant of summary judgment on the issue of respondents' entitlement to qualifed immunity on his cell-conditions claim. His case would have been remanded for trial on the claims that remained after the Fifth Circuit's decision (one of which sought relief that appears to overlap with the relief sought on the cell-conditions claim), and if he was dissatisfed with the f nal judgment, he may have been able to seek review by this Court of the cell-conditions qualifed immunity issue at that time. *Major League Baseball Players Assn.* v. *Garvey*, 532 U. S. 504, 508, n. 1 (2001) (*per curiam*). And of course, there is always the possibility that he would have been satisfed with whatever relief he obtained on the claims that went to trial.

Today's decision does not even conclusively resolve the issue of qualifed immunity on the cell-conditions claim because respondents are free to renew that defense at trial, and if the facts petitioner alleges are not ultimately established, the defense could succeed. Indeed, if petitioner cannot prove the facts he alleges, he may not be able to show that his constitutional rights were violated.

In light of all this, it is not apparent why the Court has chosen to grant review in this case.

II

While I would not grant review on the question the Court addresses, I agree that summary judgment should not have been awarded on the issue of qualifed immunity. We must view the summary judgment record in the light most favorable to petitioner, and when petitioner's verifed complaint is read in this way, a reasonable factf nder could infer not just that the conditions in the cells in question were horrifc but that respondents chose to place and keep him in those particular cells, made no effort to have the cells cleaned, and did not explore the possibility of assignment to cells with better

conditions. A reasonable corrections offcer would have known that this course of conduct was unconstitutional, and the cases on which respondents rely do not show otherwise.

Although this Court stated in *Hutto* that holding a prisoner in a "f lthy" cell for "a few days" "might be tolerable," 437 U. S., at 686–687, that equivocal and unspecifc dictum does not justify what petitioner alleges. There are degrees of f lth, ranging from conditions that are simply unpleasant to conditions that pose a grave health risk, and the concept of "a few days" is also imprecise. In addition, the statement does not address potentially important factors, such as the necessity of placing and keeping a prisoner in a particular cell and the possibility of cleaning the cell before he is housed there or during the course of that placement. A reasonable offcer could not think that this statement or the Court of Appeals' decision in *Davis* meant that it is constitutional to place a prisoner in the f lthiest cells imaginable for up to six days despite the availability of other preferable cells or despite the ability to arrange for cleaning of the cells in question.

For these reasons, I concur in the judgment.

Syllabus

ROMAN CATHOLIC DIOCESE OF BROOKLYN, NEW YORK *v.* CUOMO, GOVERNOR OF NEW YORK

ON APPLICATION FOR INJUNCTIVE RELIEF

No. 20A87. Decided November 25, 2020

The Roman Catholic Diocese of Brooklyn and Agudath Israel of America, see *Agudath Israel of America, et al.*, v. *Cuomo*, No. 20A90, filed emergency applications seeking relief from occupancy limits the Governor of New York imposed on houses of worship during the COVID–19 pandemic. Applicants contend that the limits, which restrict attendance at religious services to 10 people in areas classifed as "red zones" and 25 people in areas classifed as "orange zones," violate the Free Exercise Clause of the First Amendment. The applications seeking to enjoin enforcement of those restrictions pending resolution of the applicants' appeals to the Court of Appeals for the Second Circuit were presented to JUSTICE BREYER and by him referred to the Court.

Held: Respondent is enjoined from enforcing the 10- and 25-person occupancy limits on applicants pending disposition of appellate proceedings in the Second Circuit and disposition of petitions for certiorari, if such writs are timely sought.

The applicants are likely to prevail on the merits of their First Amendment claims. They have made a strong showing that the challenged restrictions single out houses of worship for especially harsh treatment. In a red zone, houses of worship may not admit more than 10 persons, but businesses the State categorizes as "essential" may admit as many people as they wish. The disparate treatment is even more striking in an orange zone. While attendance at houses of worship is limited to 25 persons, even non-essential businesses may decide for themselves how many persons to admit. Because the challenged restrictions are not "neutral" and of "general applicability," they must satisfy "strict scrutiny." *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520, 546.

To satisfy strict scrutiny, the restrictions must be "narrowly tailored" to serve a "compelling" state interest. *Ibid.* While stemming the spread of COVID–19 is a compelling interest, the challenged limits are not "narrowly tailored" because there are many other less restrictive rules that could be adopted to minimize the risk to those attending religious services, including linking the maximum attendance to the size of the venue.

The challenged restrictions, if enforced, will cause irreparable harm to the great majority of those who wish to attend religious services. A

loss of First Amendment freedoms, even if temporary, "unquestionably constitutes irreparable injury." *Elrod* v. *Burns*, 427 U. S. 347, 373 (plurality opinion). Remote viewing does not mitigate that injury because only personal attendance allows for observance of certain religious traditions. Granting injunctive relief will not harm the public because the State has not claimed that in-person attendance at the applicants' services has resulted in the spread of the disease, and it has not shown that public health would be imperiled if less restrictive measures were imposed.

Relief is warranted even though the Governor reclassifed the areas in question from orange to yellow, which means that the applicants may currently hold services at 50% of their maximum occupancy. The matter is not moot, and injunctive relief is still called for because the applicants remain under a constant threat that the area in question will be reclassifed as red or orange. If that occurs, the reclassifcati on will almost certainly bar individuals in the affected area from attending services before judicial relief can be obtained.

For these reasons, the Court holds that enforcement of the Governor's severe restrictions on the applicants' religious services must be enjoined.

Application for injunctive relief granted.

PER CURIAM.

The application for injunctive relief presented to JUSTICE BREYER and by him referred to the Court is granted. Respondent is enjoined from enforcing Executive Order 202.68's 10- and 25-person occupancy limits on applicant pending disposition of the appeal in the United States Court of Appeals for the Second Circuit and disposition of the petition for a writ of certiorari, if such writ is timely sought. Should the petition for a writ of certiorari be denied, this order shall terminate automatically. In the event the petition for a writ of certiorari is granted, the order shall terminate upon the sending down of the judgment of this Court.

* * *

This emergency application and another, Agudath Israel of America, et al. v. Cuomo, No. 20A90, present the same issue, and this opinion addresses both cases.

Both applications seek relief from an Executive Order issued by the Governor of New York that imposes very severe

restrictions on attendance at religious services in areas classifed as "red" or "orange" zones. In red zones, no more than 10 persons may attend each religious service, and in orange zones, attendance is capped at 25. The two applications, one fled by the Roman Catholic Diocese of Brooklyn and the other by Agudath Israel of America and affliated entities, contend that these restrictions violate the Free Exercise Clause of the First Amendment, and they ask us to enjoin enforcement of the restrictions while they pursue appellate review. Citing a variety of remarks made by the Governor, Agudath Israel argues that the Governor specifically targeted the Orthodox Jewish community and gerrymandered the boundaries of red and orange zones to ensure that heavily Orthodox areas were included. Both the Diocese and Agudath Israel maintain that the regulations treat houses of worship much more harshly than comparable secular facilities. And they tell us without contradiction that they have complied with all public health guidance, have implemented additional precautionary measures, and have operated at 25% or 33% capacity for months without a single outbreak.

The applicants have clearly established their entitlement to relief pending appellate review. They have shown that their First Amendment claims are likely to prevail, that denying them relief would lead to irreparable injury, and that granting relief would not harm the public interest. See *Winter* v. *Natural Resources Defense Council, Inc.*, 555 U. S. 7, 20 (2008). Because of the need to issue an order promptly, we provide only a brief summary of the reasons why immediate relief is essential.

Likelihood of success on the merits. The applicants have made a strong showing that the challenged restrictions violate "the minimum requirement of neutrality" to religion. *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520, 533 (1993). As noted by the dissent in the court below, statements made in connection with the challenged rules can

be viewed as targeting the "`ultra-Orthodox [Jewish] community.'" 980 F. 3d 222 (CA2 2020) (Park, J., dissenting). But even if we put those comments aside, the regulations cannot be viewed as neutral because they single out houses of worship for especially harsh treatment.[1]

In a red zone, while a synagogue or church may not admit more than 10 persons, businesses categorized as "essential" may admit as many people as they wish. And the list of "essential" businesses includes things such as acupuncture facilities, camp grounds, garages, as well as many whose services are not limited to those that can be regarded as essential, such as all plants manufacturing chemicals and microelectronics and all transportation facilities. See New York State, Empire State Development, Guidance for Determining Whether a Business Enterprise is Subject to a Workforce Reduction Under Recent Executive Orders, https://esd.ny.gov/guidance-executive-order-2026. The disparate treatment is even more striking in an orange zone. While attendance at houses of worship is limited to 25 persons, even non-essential businesses may decide for themselves how many persons to admit.

These categorizations lead to troubling results. At the hearing in the District Court, a health department offcia l testifed about a large store in Brooklyn that could "literally have hundreds of people shopping there on any given day." App. to Application in No. 20A87, Exh. D, p. 83. Yet a nearby church or synagogue would be prohibited from allowing more than 10 or 25 people inside for a worship service. And the Governor has stated that factories and schools have contributed to the spread of COVID–19, *id.*, Exh. H, at 3; App. to Application in No. 20A90, pp. 98, 100, but they are treated less harshly than the Diocese's churches and

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[1] Compare *Trump* v. *Hawaii*, 585 U. S. 667, 702 (2018) (directive "neutral on its face").

Agudath Israel's synagogues, which have admirable safety records.

Because the challenged restrictions are not "neutral" and of "general applicability," they must satisfy "strict scrutiny," and this means that they must be "narrowly tailored" to serve a "compelling" state interest. *Church of Lukumi*, 508 U. S., at 546. Stemming the spread of COVID–19 is unquestionably a compelling interest, but it is hard to see how the challenged regulations can be regarded as "narrowly tailored." They are far more restrictive than any COVID–related regulations that have previously come before the Court,[2] much tighter than those adopted by many other jurisdictions hard-hit by the pandemic, and far more severe than has been shown to be required to prevent the spread of the virus at the applicants' services. The District Court noted that "there ha[d] not been any COVID–19 outbreak in any of the Diocese's churches since they reopened," and it praised the Diocese's record in combatting the spread of the disease. 495 F. Supp. 3d 118, 121 (EDNY 2020). It found that the Diocese had been constantly "ahead of the curve, enforcing stricter safety protocols than the State required." *Id.*, at 120. Similarly, Agudath Israel notes that "[t]he Governor does not dispute that [it] ha[s] rigorously implemented and adhered to all health protocols and that there has been no outbreak of COVID–19 in [its] congregations." Application in No. 20A90, at 36.

Not only is there no evidence that the applicants have contributed to the spread of COVID–19 but there are many other less restrictive rules that could be adopted to minimize the risk to those attending religious services. Among other things, the maximum attendance at a religious service could

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[2] See *Calvary Chapel Dayton Valley* v. *Sisolak*, 591 U. S. 1042 (2020) (directive limiting in-person worship services to 50 people); *South Bay United Pentecostal Church* v. *Newsom*, 590 U. S. 965 (2020) (Executive Order limiting in-person worship to 25% capacity or 100 people, whichever was lower).

be tied to the size of the church or synagogue. Almost all of the 26 Diocese churches immediately affected by the Executive Order can seat at least 500 people, about 14 can accommodate at least 700, and 2 can seat over 1,000. Similarly, Agudath Israel of Kew Garden Hills can seat up to 400. It is hard to believe that admitting more than 10 people to a 1,000–seat church or 400–seat synagogue would create a more serious health risk than the many other activities that the State allows.

Irreparable harm. There can be no question that the challenged restrictions, if enforced, will cause irreparable harm. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod* v. *Burns*, 427 U. S. 347, 373 (1976) (plurality opinion). If only 10 people are admitted to each service, the great majority of those who wish to attend Mass on Sunday or services in a synagogue on Shabbat will be barred. And while those who are shut out may in some instances be able to watch services on television, such remote viewing is not the same as personal attendance. Catholics who watch a Mass at home cannot receive communion, and there are important religious traditions in the Orthodox Jewish faith that require personal attendance. App. to Application in No. 20A90, at 26–27.

Public interest. Finally, it has not been shown that granting the applications will harm the public. As noted, the State has not claimed that attendance at the applicants' services has resulted in the spread of the disease. And the State has not shown that public health would be imperiled if less restrictive measures were imposed.

Members of this Court are not public health experts, and we should respect the judgment of those with special expertise and responsibility in this area. But even in a pandemic, the Constitution cannot be put away and forgotten. The restrictions at issue here, by effectively barring many from attending religious services, strike at the very heart of the

First Amendment's guarantee of religious liberty. Before allowing this to occur, we have a duty to conduct a serious examination of the need for such a drastic measure.

The dissenting opinions argue that we should withhold relief because the relevant circumstances have now changed. After the applicants asked this Court for relief, the Governor reclassifed the areas in question from orange to yellow, and this change means that the applicants may hold services at 50% of their maximum occupancy. The dissents would deny relief at this time but allow the Diocese and Agudath Israel to renew their requests if this recent reclassifcati on is reversed.

There is no justifcati on for that proposed course of action. It is clear that this matter is not moot. See *Federal Election Comm'n* v. *Wisconsin Right to Life, Inc.*, 551 U. S. 449, 462 (2007); *Friends of the Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 189 (2000). And injunctive relief is still called for because the applicants remain under a constant threat that the area in question will be reclassifed as red or orange. See, *e. g.*, *Susan B. Anthony List* v. *Driehaus*, 573 U. S. 149, 158 (2014). The Governor regularly changes the classifcati on of particular areas without prior notice.[3] If that occurs again, the reclassifca - tion will almost certainly bar individuals in the affected area from attending services before judicial relief can be obtained. At most Catholic churches, Mass is celebrated daily, and "Orthodox Jews pray in [Agudath Israel's] synagogues every day." Application in No. 20A90, at 4. Moreover, if reclassifcati on occurs late in a week, as has happened in the past, there may not be time for applicants to seek and obtain relief from this Court before another Sabbath passes. Thirteen days have gone by since the Diocese f led its application, and

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[3] Recent changes were made on the following dates: Monday, November 23; Thursday, November 19; Wednesday, November 18; Wednesday, November 11; Monday, November 9; Friday, November 6; Wednesday, October 28; Wednesday, October 21.

Agudath Israel's application was filed over a week ago. While we could presumably act more swiftly in the future, there is no guarantee that we could provide relief before another weekend passes. The applicants have made the showing needed to obtain relief, and there is no reason why they should bear the risk of suffering further irreparable harm in the event of another reclassifcation.

For these reasons, we hold that enforcement of the Governor's severe restrictions on the applicants' religious services must be enjoined.

It is so ordered.

JUSTICE GORSUCH, concurring.

Government is not free to disregard the First Amendment in times of crisis. At a minimum, that Amendment prohibits government officials from treating religious exercises worse than comparable secular activities, unless they are pursuing a compelling interest and using the least restrictive means available. See *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520, 546 (1993). Yet recently, during the COVID pandemic, certain States seem to have ignored these long-settled principles.

Today's case supplies just the latest example. New York's Governor has asserted the power to assign different color codes to different parts of the State and govern each by executive decree. In "red zones," houses of worship are all but closed—limited to a maximum of 10 people. In the Orthodox Jewish community that limit might operate to exclude all women, considering 10 men are necessary to establish a *minyan*, or a quorum. In "orange zones," it's not much different. Churches and synagogues are limited to a maximum of 25 people. These restrictions apply even to the largest cathedrals and synagogues, which ordinarily hold hundreds. And the restrictions apply no matter the precautions taken, including social distancing, wearing masks, leaving doors and windows open, forgoing singing, and disinfecting spaces between services.

At the same time, the Governor has chosen to impose *no* capacity restrictions on certain businesses he considers "essential." And it turns out the businesses the Governor considers essential include hardware stores, acupuncturists, and liquor stores. Bicycle repair shops, certain signage companies, accountants, lawyers, and insurance agents are all essential too. So, at least according to the Governor, it may be unsafe to go to church, but it is always fine to pick up another bottle of wine, shop for a new bike, or spend the afternoon exploring your distal points and meridians. Who knew public health would so perfectly align with secular convenience?

As almost everyone on the Court today recognizes, squaring the Governor's edicts with our traditional First Amendment rules is no easy task. People may gather inside for extended periods in bus stations and airports, in laundromats and banks, in hardware stores and liquor shops. No apparent reason exists why people may not gather, subject to identical restrictions, in churches or synagogues, especially when religious institutions have made plain that they stand ready, able, and willing to follow all the safety precautions required of "essential" businesses and perhaps more besides. The only explanation for treating religious places differently seems to be a judgment that what happens there just isn't as "essential" as what happens in secular spaces. Indeed, the Governor is remarkably frank about this: In his judgment laundry and liquor, travel and tools, are all "essential" while traditional religious exercises are not. *That* is exactly the kind of discrimination the First Amendment forbids.

Nor is the problem an isolated one. In recent months, certain other Governors have issued similar edicts. At the fick of a pen, they have asserted the right to privilege restaurants, marijuana dispensaries, and casinos over churches, mosques, and temples. See *Calvary Chapel Dayton Valley* v. *Sisolak*, 591 U. S. 1042, 1050 (2020) (GORSUCH, J., dissenting from denial of application for injunctive relief).

In far too many places, for far too long, our first freedom has fallen on deaf ears.

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What could justify so radical a departure from the First Amendment's terms and long-settled rules about its application? Our colleagues offer two possible answers. Initially, some point to a solo concurrence in *South Bay Pentecostal Church* v. *Newsom*, 590 U. S. 965 (2020), in which THE CHIEF JUSTICE expressed willingness to defer to executive orders in the pandemic's early stages based on the newness of the emergency and how little was then known about the disease. *Post*, at 37–38 (BREYER, J., dissenting). At that time, COVID had been with us, in earnest, for just three months. Now, as we round out 2020 and face the prospect of entering a second calendar year living in the pandemic's shadow, that rationale has expired according to its own terms. Even if the Constitution has taken a holiday during this pandemic, it cannot become a sabbatical. Rather than apply a nonbinding and expired concurrence from *South Bay*, courts must resume applying the Free Exercise Clause. Today, a majority of the Court makes this plain.

Not only did the *South Bay* concurrence address different circumstances than we now face, that opinion was mistaken from the start. To justify its result, the concurrence reached back 100 years in the U. S. Reports to grab hold of our decision in *Jacobson* v. *Massachusetts*, 197 U. S. 11 (1905). But *Jacobson* hardly supports cutting the Constitution loose during a pandemic. That decision involved an entirely different mode of analysis, an entirely different right, and an entirely different kind of restriction.

Start with the mode of analysis. Although *Jacobson* predated the modern tiers of scrutiny, this Court essentially applied rational basis review to Henning Jacobson's challenge to a state law that, in light of an ongoing smallpox pandemic, required individuals to take a vaccine, pay a $5 fine, or establish that they qualified for an exemption. *Id.*, at 25 (asking

whether the State's scheme was "reasonable"); *id.*, at 27 (same); *id.*, at 28 (same). Rational basis review is the test this Court *normally* applies to Fourteenth Amendment challenges, so long as they do not involve suspect classifcati ons based on race or some other ground, or a claim of fundamental right. Put differently, *Jacobson* didn't seek to depart from normal legal rules during a pandemic, and it supplies no precedent for doing so. Instead, *Jacobson* applied what would become the traditional legal test associated with the right at issue—exactly what the Court does today. Here, that means strict scrutiny: The First Amendment traditionally requires a State to treat religious exercises at least as well as comparable secular activities unless it can meet the demands of strict scrutiny—showing it has employed the most narrowly tailored means available to satisfy a compelling state interest. *Church of Lukumi*, 508 U. S., at 546.

Next, consider the right asserted. Mr. Jacobson claimed that he possessed an implied "substantive due process" right to "bodily integrity" that emanated from the Fourteenth Amendment and allowed him to avoid not only the vaccine but *also* the $5 f ne (about $140 today) *and* the need to show he qualifed for an exemption. 197 U. S., at 13–14. This Court disagreed. But what does that have to do with our circumstances? Even if judges may impose emergency restrictions on rights that some of them have found hiding in the Constitution's penumbras, it does not follow that the same fate should befall the textually explicit right to religious exercise.

Finally, consider the different nature of the restriction. In *Jacobson*, individuals could accept the vaccine, pay the f ne, or identify a basis for exemption. *Id.*, at 12, 14. The imposition on Mr. Jacobson's claimed right to bodily integrity, thus, was avoidable and relatively modest. It easily survived rational basis review, and might even have survived strict scrutiny, given the opt-outs available to certain objectors. *Id.*, at 36, 38–39. Here, by contrast, the State has

effectively sought to ban all traditional forms of worship in affected "zones" whenever the Governor decrees and for as long as he chooses. Nothing in *Jacobson* purported to address, let alone approve, such serious and long-lasting intrusions into settled constitutional rights. In fact, *Jacobson* explained that the challenged law survived only because it did not "contravene the Constitution of the United States" or "infringe any right granted or secured by that instrument." *Id.*, at 25.

Tellingly no Justice now disputes any of these points. Nor does any Justice seek to explain why anything other than our usual constitutional standards should apply during the current pandemic. In fact, today the author of the *South Bay* concurrence even downplays the relevance of *Jacobson* for cases like the one before us. *Post*, at 32–33 (ROBERTS, C. J., dissenting). All this is surely a welcome development. But it would require a serious rewriting of history to suggest, as THE CHIEF JUSTICE does, that the *South Bay* concurrence never really relied in signifcant measure on *Jacobson*. That was the frst case *South Bay* cited on the substantive legal question before the Court, it was the only case cited involving a pandemic, and many lower courts quite understandably read its invocation as inviting them to slacken their enforcement of constitutional liberties while COVID lingers. See, *e. g.*, *Elim Romanian Pentecostal Church* v. *Pritzker*, 962 F. 3d 341, 347 (CA7 2020); *Legacy Church, Inc.* v. *Kunkel*, 472 F. Supp. 3d 926, 1082–1083 (NM 2020).

Why have some mistaken this Court's modest decision in *Jacobson* for a towering authority that overshadows the Constitution during a pandemic? In the end, I can only surmise that much of the answer lies in a particular judicial impulse to stay out of the way in times of crisis. But if that impulse may be understandable or even admirable in other circumstances, we may not shelter in place when the Constitution is under attack. Things never go well when we do.

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That leaves my colleagues to their second line of argument. Maybe precedent does not support the Governor's actions. Maybe those actions do violate the Constitution. But, they say, we should stay our hand all the same. Even if the churches and synagogues before us have been subject to unconstitutional restrictions for months, it is no matter because, just the other day, the Governor changed his color code for Brooklyn and Queens where the plaintiffs are located. Now those regions are "yellow zones" and the challenged restrictions on worship associated with "orange" and "red zones" do not apply. So, the reasoning goes, we should send the plaintiffs home with an invitation to return later if need be.

To my mind, this reply only advances the case for intervention. It has taken weeks for the plaintiffs to work their way through the judicial system and bring their case to us. During all this time, they were subject to unconstitutional restrictions. Now, just as this Court was preparing to act on their applications, the Governor loosened his restrictions, all while continuing to assert the power to tighten them again anytime as conditions warrant. So if we dismissed this case, nothing would prevent the Governor from reinstating the challenged restrictions tomorrow. And by the time a new challenge might work its way to us, he could just change them again. The Governor has fought this case at every step of the way. To turn away religious leaders bringing meritorious claims just because the Governor decided to hit the "off" switch in the shadow of our review would be, in my view, just another sacrifce of fundamental rights in the name of judicial modesty.

Even our dissenting colleagues do not suggest this case is moot or otherwise outside our power to decide. They counsel delay only because "the disease-related circumstances [are] rapidly changing." *Post*, at 38 (opinion of BREYER, J.).

But look at what those "rapidly changing" circumstances suggest. Both Governor Cuomo and Mayor de Blasio have "indicated it's only a matter of time before [all] fve boroughs" of New York City are f ipped from yellow to orange. J. Skolnik, D. Goldiner, & D. Slattery, Staten Island Goes `Orange' As Cuomo Urges Coronavirus `Reality Check' Ahead of Thanksgiving, N. Y. Daily News (Nov. 23, 2020), https://www.nydailynews.com/coronavirus/ny-coronavirus-cuomo-thanksgiving-20201123-yyhxfo3kzbdinbfbsqos3tvrku-story-html. On anyone's account, then, it seems inevitable this dispute will require the Court's attention.

It is easy enough to say it would be a small thing to require the parties to "ref le their applications" later. *Post*, at 35 (opinion of BREYER, J.). But none of us are rabbis wondering whether future services will be disrupted as the High Holy Days were, or priests preparing for Christmas. Nor may we discount the burden on the faithful who have lived for months under New York's unconstitutional regime unable to attend religious services. Whether this Court could decide a renewed application promptly is beside the point. The parties before us have already shown their entitlement to relief. Saying so now will establish clear legal rules and enable both sides to put their energy to productive use, rather than devoting it to endless emergency litigation. Saying so now will dispel, as well, misconceptions about the role of the Constitution in times of crisis, which have already been permitted to persist for too long.

It is time—past time—to make plain that, while the pandemic poses many grave challenges, there is no world in which the Constitution tolerates color-coded executive edicts that reopen liquor stores and bike shops but shutter churches, synagogues, and mosques.

JUSTICE KAVANAUGH, concurring.

I vote to grant the applications of the Roman Catholic Diocese of Brooklyn and Agudath Israel of America for tempo-

rary injunctions against New York's 10-person and 25-person caps on attendance at religious services. On this record, temporary injunctions are warranted because New York's severe caps on attendance at religious services likely violate the First Amendment. Importantly, the Court's orders today are not final decisions on the merits. Instead, the Court simply grants *temporary* injunctive relief until the Court of Appeals in December, and then this Court as appropriate, can more fully consider the merits.

To begin with, New York's 10-person and 25-person caps on attendance at religious services in red and orange zones (which are areas where COVID–19 is more prevalent) are much more severe than most other States' restrictions, including the California and Nevada limits at issue in *South Bay United Pentecostal Church* v. *Newsom*, 590 U. S. 965 (2020), and *Calvary Chapel Dayton Valley* v. *Sisolak*, 591 U. S. 1042 (2020). In *South Bay*, houses of worship were limited to 100 people (or, in buildings with capacity of under 400, to 25% of capacity). And in *Calvary*, houses of worship were limited to 50 people.

New York has gone much further. In New York's red zones, most houses of worship are limited to 10 people; in orange zones, most houses of worship are limited to 25 people. Those strict and inflexible numerical caps apply even to large churches and synagogues that ordinarily can hold hundreds of people and that, with social distancing and mask requirements, could still easily hold far more than 10 or 25 people.

Moreover, New York's restrictions on houses of worship not only are severe, but also are discriminatory. In red and orange zones, houses of worship must adhere to numerical caps of 10 and 25 people, respectively, but those caps do not apply to some secular buildings in the same neighborhoods. In a red zone, for example, a church or synagogue must adhere to a 10-person attendance cap, while a grocery store, pet store, or big-box store down the street does not face the same restriction. In an orange zone, the discrimination

against religion is even starker: Essential businesses and many non-essential businesses are subject to no attendance caps at all.

The State's discrimination against religion raises a serious First Amendment issue and triggers heightened scrutiny, requiring the State to provide a suffcient justifcati on for the discrimination. See *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520, 537–538 (1993); *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872, 884 (1990). But New York has not suffciently justifed treating houses of worship more severely than secular businesses.

The State argues that it has not impermissibly discriminated against religion because some secular businesses such as movie theaters must remain closed and are thus treated less favorably than houses of worship. But under this Court's precedents, it does not suffce for a State to point out that, as compared to houses of worship, *some* secular businesses are subject to similarly severe or even more severe restrictions. See *Lukumi*, 508 U. S., at 537–538; *Smith*, 494 U. S., at 884; see also *Calvary*, 591 U. S., at 1055–1056 (KAVANAUGH, J., dissenting from denial of application for injunctive relief). Rather, once a State creates a favored class of businesses, as New York has done in this case, the State must justify why houses of worship are excluded from that favored class. Here, therefore, the State must justify imposing a 10-person or 25-person limit on houses of worship but not on favored secular businesses. See *Lukumi*, 508 U. S., at 537–538; *Smith*, 494 U. S., at 884. The State has not done so.

To be clear, the COVID–19 pandemic remains extraordinarily serious and deadly. And at least until vaccines are readily available, the situation may get worse in many parts of the United States. The Constitution "principally entrusts the safety and the health of the people to the politically accountable offcia ls of the States." *South Bay*, 590 U. S., at 967 (ROBERTS, C. J., concurring in denial of applica-

tion for injunctive relief) (internal quotation marks and alteration omitted). Federal courts therefore must afford substantial deference to state and local authorities about how best to balance competing policy considerations during the pandemic. See *ibid.* But judicial deference in an emergency or a crisis does not mean wholesale judicial abdication, especially when important questions of religious discrimination, racial discrimination, free speech, or the like are raised.

In light of the devastating pandemic, I do not doubt the State's authority to impose tailored restrictions—even very strict restrictions—on attendance at religious services and secular gatherings alike. But the New York restrictions on houses of worship are not tailored to the circumstances given the First Amendment interests at stake. To reiterate, New York's restrictions on houses of worship are much more severe than the California and Nevada restrictions at issue in *South Bay* and *Calvary*, and much more severe than the restrictions that most other States are imposing on attendance at religious services. And New York's restrictions discriminate against religion by treating houses of worship significantly worse than some secular businesses.

For those reasons, I agree with THE CHIEF JUSTICE that New York's "[n]umerical capacity limits of 10 and 25 people . . . seem unduly restrictive" and that "it may well be that such restrictions violate the Free Exercise Clause." *Post*, at 32. I part ways with THE CHIEF JUSTICE on a narrow procedural point regarding the timing of the injunctions. THE CHIEF JUSTICE would not issue injunctions at this time. As he notes, the State made a change in designations a few days ago, and now none of the churches and synagogues who are applicants in these cases are located in red or orange zones. As I understand it, THE CHIEF JUSTICE would not issue an injunction unless and until a house of worship applies for an injunction and is still in a red or orange zone on the day that the injunction is finally issued. But the State has not withdrawn or amended the relevant Executive

Order. And the State does not suggest that the applicants lack standing to challenge the red-zone and orange-zone caps imposed by the Executive Order, or that these cases are moot or not ripe. In other words, the State does not deny that the applicants face an imminent injury *today*. In particular, the State does not deny that some houses of worship, including the applicants here, are located in areas that likely will be classifed as red or orange zones in the very near future. I therefore see no jurisdictional or prudential barriers to issuing the injunctions now.

There also is no good reason to delay issuance of the injunctions, as I see it. If no houses of worship end up in red or orange zones, then the Court's injunctions today will impose no harm on the State and have no effect on the State's response to COVID–19. And if houses of worship end up in red or orange zones, as is likely, then today's injunctions will ensure that religious organizations are not subjected to the unconstitutional 10-person and 25-person caps. Moreover, issuing the injunctions now rather than a few days from now not only will ensure that the applicants' constitutional rights are protected, but also will provide some needed clarity for the State and religious organizations.

* * *

On this record, the applicants have shown: a likelihood that the Court would grant certiorari and reverse; irreparable harm; and that the equities favor injunctive relief. I therefore vote to grant the applications for temporary injunctive relief until the Court of Appeals in December, and then this Court as appropriate, can more fully consider the merits.

CHIEF JUSTICE ROBERTS, dissenting.

I would not grant injunctive relief under the present circumstances. There is simply no need to do so. After the Diocese and Agudath Israel f led their applications, the Governor revised the designations of the affected areas. None

of the houses of worship identifed in the applications is now subject to any fxed numerical restrictions. At these locations, the applicants can hold services with up to 50% of capacity, which is at least as favorable as the relief they currently seek.

Numerical capacity limits of 10 and 25 people, depending on the applicable zone, do seem unduly restrictive. And it may well be that such restrictions violate the Free Exercise Clause. It is not necessary, however, for us to rule on that serious and diffcu lt question at this time. The Governor might reinstate the restrictions. But he also might not. And it is a signifcant matter to override determinations made by public health offcia ls concerning what is necessary for public safety in the midst of a deadly pandemic. If the Governor does reinstate the numerical restrictions the applicants can return to this Court, and we could act quickly on their renewed applications. As things now stand, however, the applicants have not demonstrated their entitlement to "the extraordinary remedy of injunction." *Nken* v. *Holder*, 556 U. S. 418, 428 (2009) (internal quotation marks omitted). An order telling the Governor not to do what he's not doing fails to meet that stringent standard.

As noted, the challenged restrictions raise serious concerns under the Constitution, and I agree with JUSTICE KAVANAUGH that they are distinguishable from those we considered in *South Bay United Pentecostal Church* v. *Newsom*, 590 U. S. 965 (2020), and *Calvary Chapel Dayton Valley* v. *Sisolak*, 591 U. S. 1042 (2020). See *ante*, at 28, 30 (concurring opinion). I take a different approach than the other dissenting Justices in this respect.

To be clear, I do not regard my dissenting colleagues as "cutting the Constitution loose during a pandemic," yielding to "a particular judicial impulse to stay out of the way in times of crisis," or "shelter[ing] in place when the Constitution is under attack." *Ante*, at 23, 25 (GORSUCH, J., concurring). They simply view the matter differently after careful

study and analysis refec ting their best efforts to fulf ll their responsibility under the Constitution.

One solo concurrence today takes aim at my concurring opinion in *South Bay*. See *ante*, at 23–25 (opinion of GORSUCH, J.). Today's concurrence views that opinion with disfavor because "[t]o justify its result, [it] reached back 100 years in the U. S. Reports to grab hold of our decision in *Jacobson* v. *Massachusetts*, 197 U. S. 11 (1905)." *Ante*, at 23. Today's concurrence notes that *Jacobson* "was the frst case *South Bay* cited on the substantive legal question before the Court," and "it was the only case cited involving a pandemic." *Ante*, at 25. And it suggests that, in the wake of *South Bay*, some have "mistaken this Court's modest decision in *Jacobson* for a towering authority that overshadows the Constitution during a pandemic." *Ibid.* But while *Jacobson* occupies three pages of today's concurrence, it warranted exactly one sentence in *South Bay*. What did that one sentence say? Only that "[o]ur Constitution principally entrusts `[t]he safety and the health of the people' to the politically accountable offcia ls of the States `to guard and protect.' " *South Bay*, 590 U. S., at 967 (ROBERTS, C. J., concurring in denial of application for injunctive relief) (quoting *Jacobson*, 197 U. S., at 38). It is not clear which part of this lone quotation today's concurrence f nds so discomfti ng. The concurrence speculates that there is so much more to the sentence than meets the eye, invoking—among other interpretive tools—the new "frst case cited" rule. But the actual proposition asserted should be uncontroversial, and the concurrence must reach beyond the words themselves to f nd the target it is looking for.

JUSTICE BREYER, with whom JUSTICE SOTOMAYOR and JUSTICE KAGAN join, dissenting.

New York regulations designed to fght the rapidly spreading—and, in many cases, fatal—COVID–19 virus permit the Governor to identify hot spots where infection rates have spiked and to designate those hot spots as red zones, the

immediately surrounding areas as orange zones, and the outlying areas as yellow zones. Brief in Opposition in No. 20A87, p. 12. The regulations impose restrictions within these zones (with the strictest restrictions in the red zones and the least strict restrictions in the yellow zones) to curb transmission of the virus and prevent spread into nearby areas. *Ibid.* In October, the Governor designated red, orange, and yellow zones in parts of Brooklyn and Queens. Brief in Opposition in *Agudath Israel of America* v. *Cuomo*, O. T. 2020, No. 20A90, pp. 10–11 (Brief in Opposition in No. 20A90). Among other things, the restrictions in these zones limit the number of persons who can be present at one time at a gathering in a house of worship to: the lesser of 10 people or 25% of maximum capacity in a red zone; the lesser of 25 people or 33% of maximum capacity in an orange zone; and 50% of maximum capacity in a yellow zone. *Id.*, at 8–9.

Both the Roman Catholic Diocese of Brooklyn and Agudath Israel of America (together with Agudath Israel of Kew Garden Hills and its employee and Agudath Israel of Madison and its rabbi) brought lawsuits against the Governor of New York. They claimed that the fxed-capacity restrictions of 10 people in red zones and 25 people in orange zones were too strict—to the point where they violated the First Amendment's protection of the free exercise of religion. Both parties asked a Federal District Court for a preliminary injunction that would prohibit the State from enforcing these red and orange zone restrictions.

After receiving evidence and hearing witness testimony, the District Court in the Diocese's case found that New York's regulations were "crafted based on science and for epidemiological purposes." 495 F. Supp. 3d 118, 131 (EDNY 2020). It wrote that they treated "religious gatherings . . . more favorably than similar gatherings" with comparable risks, such as "public lectures, concerts or theatrical performances." *Id.*, at 129. The court also recognized the Diocese's argument that the regulations

treated religious gatherings less favorably than what the State has called "essential businesses," including, for example, grocery stores and banks. *Id.*, at 130. But the court found these essential businesses to be distinguishable from religious services and declined to "second guess the State's judgment about what should qualify as an essential business." *Ibid.* The District Court denied the motion for a preliminary injunction. The Diocese appealed, and the District Court declined to issue an emergency injunction pending that appeal. The Court of Appeals for the Second Circuit also denied the Diocese's request for an emergency injunction pending appeal, but it called for expedited brief ng and scheduled a full hearing on December 18 to address the merits of the appeal. This Court, unlike the lower courts, has now decided to issue an injunction that would prohibit the State from enforcing its fxed-capacity restrictions on houses of worship in red and orange zones while the parties await the Second Circuit's decision. I cannot agree with that decision.

For one thing, there is no need now to issue any such injunction. Those parts of Brooklyn and Queens where the Diocese's churches and the two applicant synagogues are located are no longer within red or orange zones. Brief in Opposition in No. 20A90, at 17. Thus, none of the applicants are now subject to the fxed-capacity restrictions that they challenge in their applications. The specific applicant houses of worship are now in yellow zones where they can hold services up to 50% of maximum capacity. And the applicants do not challenge any yellow zone restrictions, as the conditions in the yellow zone provide them with more than the relief they asked for in their applications.

Instead, the applicants point out that the State might reimpose the red or orange zone restrictions in the future. But, were that to occur, they could ref le their applications here, by letter brief if necessary. And this Court, if necessary, could then decide the matter in a day or two, perhaps

even in a few hours. Why should this Court act now without argument or full consideration in the ordinary course (and prior to the Court of Appeals' consideration of the matter) when there is no legal or practical need for it to do so? I have found no convincing answer to that question.

For another thing, the Court's decision runs contrary to ordinary governing law. We have previously said that an injunction is an "extraordinary remedy." *Nken* v. *Holder*, 556 U. S. 418, 428 (2009) (internal quotation marks omitted). That is especially so where, as here, the applicants seek an injunction prior to full argument and contrary to the lower courts' determination. Here, we consider severe restrictions. Those restrictions limit the number of persons who can attend a religious service to 10 and 25 congregants (irrespective of mask-wearing and social distancing). And those numbers are indeed low. But whether, in present circumstances, those low numbers violate the Constitution's Free Exercise Clause is far from clear, and, in my view, the applicants must make such a showing here to show that they are entitled to "the extraordinary remedy of injunction." *Ibid.* (internal quotation marks omitted).

COVID–19 has infected more than 12 million Americans and caused more than 250,000 deaths nationwide. At least 26,000 of those deaths have occurred in the State of New York, with 16,000 in New York City alone. And the number of COVID–19 cases is many times the number of deaths. The Nation is now experiencing a second surge of infections. In New York, for example, the 7-day average of new confr med cases per day has risen from around 700 at the end of the summer to over 4,800 last week. Nationwide, the number of new confr med cases per day is now higher than it has ever been. Brief in Opposition in No. 20A87, at 1; COVID in the U. S.: Latest Map and Case Count (Nov. 24, 2020), http://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#states; New York COVID Map and Case Count (Nov. 24, 2020), http://www.nytimes.com/interactive/2020/us/new-york-coronavirus-cases.html.

At the same time, members of the scientifc and medical communities tell us that the virus is transmitted from person to person through respiratory droplets produced when a person or group of people talk, sing, cough, or breathe near each other. Brief in Opposition in No. 20A87, at 3 (citing the World Health Organization); Brief of the American Medical Association as *Amici Curiae* 5–6. Thus, according to experts, the risk of transmission is higher when people are in close contact with one another for prolonged periods of time, particularly indoors or in other enclosed spaces. *Id.*, at 3–6. The nature of the epidemic, the spikes, the uncertainties, and the need for quick action, taken together, mean that the State has countervailing arguments based upon health, safety, and administrative considerations that must be balanced against the applicants' First Amendment challenges. That fact, along with others that JUSTICE SOTOMAYOR describes, means that the applicants' claim of a constitutional violation (on which they base their request for injunctive relief) is far from clear. See *post*, p. 38 (dissenting opinion). (All of these matters could be considered and discussed in the ordinary course of proceedings at a later date.) At the same time, the public's serious health and safety needs, which call for swift government action in ever changing circumstances, also mean that it is far from clear that "the balance of equities tips in [the applicants'] favor," or "that an injunction is in the public interest." *Winter* v. *Natural Resources Defense Council, Inc.*, 555 U. S. 7, 20 (2008).

Relevant precedent suggests the same. We have previously recognized that courts must grant elected offcia ls "broad" discretion when they "undertake to act in areas fraught with medical and scientifc uncertainties." *South Bay United Pentecostal Church* v. *Newsom*, 590 U. S. 965, 967 (2020) (ROBERTS, C. J., concurring in denial of application for injunctive relief) (alteration omitted). That is because the "Constitution principally entrusts the safety and the health of the people to the politically accountable offcia ls of the States." *Ibid.* (alterations and internal quotation marks omitted).

The elected branches of state and national governments can marshal scientifc expertise and craft specifc policies in response to "changing facts on the ground." *Ibid.* And they can do so more quickly than can courts. That is particularly true of a court, such as this Court, which does not conduct evidentiary hearings. It is true even more so where, as here, the need for action is immediate, the information likely limited, the making of exceptions diffcu lt, and the disease-related circumstances rapidly changing.

I add that, in my view, the Court of Appeals will, and should, act expeditiously. The State of New York will, and should, seek ways of appropriately recognizing the religious interests here at issue without risking harm to the health and safety of the people of New York. But I see no practical need to issue an injunction to achieve these objectives. Rather, as I said, I can f nd no need for an immediate injunction. I believe that, under existing law, it ought not to issue. And I dissent from the Court's decision to the contrary.

JUSTICE SOTOMAYOR, with whom JUSTICE KAGAN joins, dissenting.

Amidst a pandemic that has already claimed over a quarter million American lives, the Court today enjoins one of New York's public health measures aimed at containing the spread of COVID–19 in areas facing the most severe outbreaks. Earlier this year, this Court twice stayed its hand when asked to issue similar extraordinary relief. See *South Bay United Pentecostal Church* v. *Newsom*, 590 U. S. 965 (2020); *Calvary Chapel Dayton Valley* v. *Sisolak*, 591 U. S. 1042 (2020). I see no justifcati on for the Court's change of heart, and I fear that granting applications such as the one f led by the Roman Catholic Diocese of Brooklyn (Diocese) will only exacerbate the Nation's suffering.[1]

[1] Ironically, due to the success of New York's public health measures, the Diocese is no longer subject to the numerical caps on attendance it seeks to enjoin. See Brief in Opposition in *Agudath Israel of America*

South Bay and *Calvary Chapel* provided a clear and workable rule to state offcia ls seeking to control the spread of COVID–19: They may restrict attendance at houses of worship so long as comparable secular institutions face restrictions that are at least equally as strict. See *South Bay*, 590 U. S., at 966 (ROBERTS, C. J., concurring in denial of application for injunctive relief). New York's safety measures fall comfortably within those bounds. Like the States in *South Bay* and *Calvary Chapel*, New York applies "[s]imilar or more severe restrictions . . . to comparable secular gatherings, including lectures, concerts, movie showings, spectator sports, and theatrical performances, where large groups of people gather in close proximity for extended periods of time." *Ibid.* Likewise, New York "treats more leniently only dissimilar activities, such as operating grocery stores, banks, and laundromats, in which people neither congregate in large groups nor remain in close proximity for extended periods." *Ibid.* That should be enough to decide this case.

The Diocese attempts to get around *South Bay* and *Calvary Chapel* by disputing New York's conclusion that attending religious services poses greater risks than, for instance, shopping at big box stores. Application in No. 20A87, p. 23 (Application). But the District Court rejected that argument as unsupported by the factual record. 495 F. Supp. 3d 118, 128–130 (EDNY 2020). Undeterred, JUSTICE GORSUCH offers up his own examples of secular activities he thinks might pose similar risks as religious gatherings, but which are treated more leniently under New York's rules (*e. g.*, going to the liquor store or getting a bike repaired). *Ante*, at 22 (concurring opinion). But JUSTICE GORSUCH does not even try to

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v. *Cuomo*, No. 20A90, p. 17. Yet the Court grants this application to ensure that, should infection rates rise once again, the Governor will be unable to reimplement the very measures that have proven so successful at allowing the free (and comparatively safe) exercise of religion in New York.

square his examples with the conditions medical experts tell us facilitate the spread of COVID–19: large groups of people gathering, speaking, and singing in close proximity indoors for extended periods of time. See App. to Brief in Opposition in No. 20A87, pp. 46–51 (declaration of Debra S. Blog, Director of the Div. of Epidemiology, NY Dept. of Health); Brief for the American Medical Association et al. as *Amicus Curiae* 3–6 (Brief for AMA). Unlike religious services, which "have every one of th[ose] risk factors," Brief for AMA 6, bike repair shops and liquor stores generally do not feature customers gathering inside to sing and speak together for an hour or more at a time. *Id.*, at 7 ("Epidemiologists and physicians generally agree that religious services are among the riskiest activities"). Justices of this Court play a deadly game in second guessing the expert judgment of health officials about the environments in which a contagious virus, now infecting a million Americans each week, spreads most easily.

In truth, this case is easier than *South Bay* and *Calvary Chapel*. While the state regulations in those cases generally applied the same rules to houses of worship and secular institutions where people congregate in large groups, New York treats houses of worship far more favorably than their secular comparators. Compare, *e. g.*, *Calvary Chapel*, 591 U. S., at 1056 (KAVANAUGH, J., dissenting from denial of application for injunctive relief) (noting that Nevada subjected movie theaters and houses of worship alike to a 50-person cap) with App. to Brief in Opposition in No. 20A87, p. 53 (requiring movie theaters, concert venues, and sporting arenas subject to New York's regulation to close entirely, but allowing houses of worship to open subject to capacity restrictions). And whereas the restrictions in *South Bay* and *Calvary Chapel* applied statewide, New York's fixed-capacity restrictions apply only in specially designated areas experiencing a surge in COVID–19 cases.

The Diocese suggests that, because New York's regulation singles out houses of worship by name, it cannot be neutral

with respect to the practice of religion. Application 22. Thus, the argument goes, the regulation must, *ipso facto*, be subject to strict scrutiny. It is true that New York's policy refers to religion on its face. But as I have just explained, that is because the policy singles out religious institutions for preferential treatment in comparison to secular gatherings, not because it discriminates against them. Surely the Diocese cannot demand laxer restrictions by pointing out that it is already being treated better than comparable secular institutions.[2]

Finally, the Diocese points to certain statements by Governor Cuomo as evidence that New York's regulation is impermissibly targeted at religious activity—specifca lly, at combatting heightened rates of positive COVID–19 cases among New York's Orthodox Jewish community. Application 24. The Diocese suggests that these comments supply "an independent basis for the application of strict scrutiny." Reply Brief in No. 20A87, p. 9. I do not see how. The Governor's comments simply do not warrant an application of strict scrutiny under this Court's precedents. Just a few Terms ago, this Court declined to apply heightened scrutiny to a Presidential Proclamation limiting immigration from Muslim-majority countries, even though President Trump

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[2] JUSTICE KAVANAUGH cites *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520, 537–538 (1993), and *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872, 884 (1990), for the proposition that States must justify treating even noncomparable secular institutions more favorably than houses of worship. *Ante*, at 29 (concurring opinion). But those cases created no such rule. *Lukumi* struck down a law that allowed animals to be killed for almost any purpose other than animal sacrifce , on the ground that the law was a "`religious gerrymander'" targeted at the Santeria faith. 508 U. S., at 535. *Smith* is even farther afeld, standing for the entirely inapposite proposition that "the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." 494 U. S., at 879 (internal quotation marks omitted).

had described the Proclamation as a "Muslim Ban," originally conceived of as a "`total and complete shutdown of Muslims entering the United States until our country's representatives can fg ure out what is going on.'" *Trump* v. *Hawaii*, 585 U. S. 667, 700 (2018). If the President's statements did not show "that the challenged restrictions violate the `minimum requirement of neutrality' to religion," *ante*, at 16 (quoting *Lukumi*, 508 U. S., at 533), it is hard to see how Governor Cuomo's do.

* * *

Free religious exercise is one of our most treasured and jealously guarded constitutional rights. States may not discriminate against religious institutions, even when faced with a crisis as deadly as this one. But those principles are not at stake today. The Constitution does not forbid States from responding to public health crises through regulations that treat religious institutions equally or more favorably than comparable secular institutions, particularly when those regulations save lives. Because New York's COVID–19 restrictions do just that, I respectfully dissent.

Syllabus

TANZIN ET AL. *v.* TANVIR ET AL.

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

No. 19–71. Argued October 6, 2020—Decided December 10, 2020

The Religious Freedom Restoration Act of 1993 (RFRA) was enacted in the wake of *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872, to provide a remedy to redress Federal Government violations of the right to free exercise under the First Amendment. Respondents are practicing Muslims who sued under RFRA, claiming that federal agents placed them on the No Fly List for refusing to act as informants against their religious communities. They sought injunctive relief against the agents in their offcia l capacities and monetary damages against the agents in their individual capacities. As relevant here, the District Court found that RFRA does not permit monetary relief and dismissed their individual-capacity claims. The Second Circuit reversed, holding that RFRA's remedies provision encompasses money damages against Government offcia ls.

Held: RFRA's express remedies provision permits litigants, when appropriate, to obtain money damages against federal offcia ls in their individual capacities. Pp. 46–52.

(a) RFRA's text provides that persons may sue and "obtain appropriate relief against a government," 42 U. S. C. § 2000bb–1(c), including an "offcia l (or other person acting under color of law) of the United States," § 2000bb–2(1). RFRA supplants the ordinary meaning of "government" with a different, express def nition that includes "offcia l[s]." It then underscores that "offcia l[s]" are "person[s]." Under RFRA's def nition, relief that can be executed against an "offcia l . . . of the Unites States" *is* "relief against a government." This reading is confr med by RFRA's use of the phrase "persons acting under color of law," which has long been interpreted by this Court in the 42 U. S. C. § 1983 context to permit suits against offcia ls in their individual capacities. See, *e. g.*, *Memphis Community School Dist.* v. *Stachura*, 477 U. S. 299, 305–306. Pp. 47–48.

(b) RFRA's term "appropriate relief" is "open-ended" on its face; thus, what relief is "`appropriate' " is "inherently context dependent." *Sossamon* v. *Texas*, 563 U. S. 277, 286. In the context of suits against Government offcia ls, damages have long been awarded as appropriate relief, and though more limited today, they remain an appropriate form of relief. The availability of damages under § 1983 is particularly sa-

lient here. When Congress frst enacted RFRA, the def nition of "government" included state and local offcia ls. In order to reinstate the pre-*Smith* substantive protections of the First Amendment *and* the right to vindicate those protections by a claim, § 2000bb(b), the remedies provision must have encompassed at least the same forms of relief authorized by § 1983. Because damages claims have always been available under § 1983 for clearly established violations of the First Amendment, that means RFRA provides, as one avenue for relief, a right to seek damages against Government employees. The presumption in *Sossamon*, 563 U. S. 277, is inapplicable because this case does not involve sovereign immunity. Pp. 48–52.

894 F. 3d 449, affr med.

THOMAS, J., delivered the opinion of the Court, in which all other Members joined, except BARRETT, J., who took no part in the consideration or decision of the case.

Deputy Solicitor General Kneedler argued the cause for petitioners. With him on the brief were *Solicitor General Francisco*, *Assistant Attorney General Hunt*, *Deputy Solicitor General Wall*, *Deputy Assistant Attorney General Mooppan*, *Austin L. Raynor*, *Benjamin H. Torrance*, *Sarah S. Normand*, *Mary Hampton Mason*, and *Reginald M. Skinner.*

Ramzi Kassem argued the cause for respondents. With him on the brief were *Naz Ahmad*, *Shayana Kadidal*, *Baher Azmy*, *Jennifer R. Cowan*, *Erol Gulay*, *Christopher S. Ford*, and *Sandy Tomasik.**

**Geoffrey T. Blackwell* f led a brief for American Atheists et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affr mance were f led for the American-Arab Anti-Discrimination Committee by *Christopher J. Wright*, *Jason Neal*, *Iman Boukadoum*, *Abed A. Ayoub*, and *Anton G. Hajjar*; for the General Conference of Seventh-Day Adventists by *Gordon D. Todd*; for the Institute for Justice by *Anya Bidwell* and *Patrick Jaicomo*; for Muslim Advocates by *Matthew Callahan*; for Religious and Civil-Rights Organizations by *Richard B. Katskee*, *Alex J. Luchenitser*, and *Kenneth D. Upton*; for The Rutherford Institute by *Michael J. Lockerby*, *George E. Quillin*, *Joshua M. Hawkes* and *John W. Whitehead*; for the Sikh Coalition by *James A. Sonne*; for Statutory Interpretation Scholars by *Alan E. Schoenfeld* and *James D. Barton*; for Fourteen Religious-Liberty Scholars et al.

JUSTICE THOMAS delivered the opinion of the Court.

The Religious Freedom Restoration Act of 1993 (RFRA) prohibits the Federal Government from imposing substantial burdens on religious exercise, absent a compelling interest pursued through the least restrictive means. 107 Stat. 1488, 42 U. S. C. § 2000bb *et seq.* It also gives a person whose religious exercise has been unlawfully burdened the right to seek "appropriate relief." The question here is whether "appropriate relief" includes claims for money damages against Government offcia ls in their individual capacities. We hold that it does.

I

A

RFRA secures Congress' view of the right to free exercise under the First Amendment, and it provides a remedy to redress violations of that right. Congress passed the Act in the wake of this Court's decision in *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872, 885–890 (1990), which held that the First Amendment tolerates neutral, generally applicable laws that burden or prohibit religious acts even when the laws are unsupported by a narrowly tailored, compelling governmental interest. See § 2000bb(a). RFRA sought to counter the effect of that holding and restore the pre-*Smith* "compelling interest test" by "provid[ing] a claim . . . to persons whose religious exercise is substantially burdened by government."

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by *Douglas Laycock*, *Thomas C. Berg*, *Kimberlee Wood Colby*, *Reed N. Smith*, *K. Hollyn Hollman*, and *Jennifer L. Hawks*; and for 67 Religious Organizations by *Adeel Mangi*.

Briefs of *amici curiae* were f led for the Becket Fund for Religious Liberty by *Lori H. Windham*, *Joseph C. Davis*, and *Nicholas R. Reaves*; for the Freedom from Religion Foundation et al. by *Marci A. Hamilton* and *Patrick C. Elliott*; for Religious Organizations et al. by *Kelly J. Shackelford*, *Hiram S. Sasser III*, *Michael D. Berry*, and *Jeremiah G. Dys*; and for Jeffrey D. Kahn by *Andrew T. Tutt*, *R. Stanton Jones*, and *Stephen K. Wirth*.

§§ 2000bb(b)(1)–(2). That right of action enables a person to "obtain appropriate relief against a government." § 2000bb–1(c). A "`government'" is def ned to include "a branch, department, agency, instrumentality, and offcia l (or other person acting under color of law) of the United States." § 2000bb–2(1).

B

Respondents Muhammad Tanvir, Jameel Algibhah, and Naveed Shinwari are practicing Muslims who claim that Federal Bureau of Investigation agents placed them on the No Fly List in retaliation for their refusal to act as informants against their religious communities. Respondents sued various agents in their offcia l capacities, seeking removal from the No Fly List. They also sued the agents in their individual capacities for money damages. According to respondents, the retaliation cost them substantial sums of money: airline tickets wasted and income from job opportunities lost.

More than a year after respondents sued, the Department of Homeland Security informed them that they could now fy , thus mooting the claims for injunctive relief. The District Court then dismissed the individual-capacity claims for money damages, ruling that RFRA does not permit monetary relief.

The Second Circuit reversed. 894 F. 3d 449 (2018). It determined that RFRA's express remedies provision, combined with the statutory def nition of "Government," authorizes claims against federal offcia ls in their individual capacities. Relying on our precedent and RFRA's broad protections for religious liberty, the court concluded that the open-ended phrase "appropriate relief" encompasses money damages against offcia ls. We granted certiorari, 589 U. S. 1078 (2019), and now affr m.

II

As usual, we start with the statutory text. *E. g.*, *Mission Product Holdings, Inc.* v. *Tempnology, LLC*, 587 U. S. 370, 379 (2019). A person whose exercise of religion has

been unlawfully burdened may "obtain appropriate relief against a government." 42 U. S. C. § 2000bb–1(c).

A

We first have to determine if injured parties can sue Government officials in their personal capacities. RFRA's text provides a clear answer: They can. Persons may sue and obtain relief "against a government," § 2000bb–1(c), which is defined to include "a branch, department, agency, instrumentality, and *official* (*or other person acting under color of law*) of the United States." § 2000bb–2(1) (emphasis added).

The Government urges us to limit lawsuits against officials to suits against them in their official, not personal, capacities. A lawsuit seeking damages from employees in their individual capacities, the Government argues, is not really "against a government" because relief "can be executed only against the official's personal assets." *Kentucky* v. *Graham*, 473 U. S. 159, 166 (1985).

The problem with this otherwise plausible argument is that Congress supplanted the ordinary meaning of "government" with a different, express definition. "`When a statute includes an explicit definition, we must follow that definition,' even if it varies from a term's ordinary meaning." *Digital Realty Trust, Inc.* v. *Somers*, 583 U. S. 149, 160 (quoting *Burgess* v. *United States*, 553 U. S. 124, 130 (2008)). For example, if a statute defines a "State" to include territories and districts, that addition to the plain meaning controls. See, *e. g.*, 15 U. S. C. § 267. So too here. A "government," under RFRA, extends beyond the term's plain meaning to include officials. And the term "official" does not refer solely to an office, but rather to the actual person "who is invested with an office." 10 Oxford English Dictionary 733 (2d ed. 1989). Under RFRA's definition, relief that can be executed against an "official . . . of the United States" *is* "relief against a government." 42 U. S. C. §§ 2000bb–1(c), 2000bb–2(1).

Not only does the term "government" encompass officials, it also authorizes suits against "other person[s] acting under

color of law." §2000bb–2(1). The right to obtain relief against "a person" cannot be squared with the Government's reading that relief must always run against the United States. Moreover, the use of the phrase "offcial (*or other* person . . .)" underscores that "offcial[s]" are treated like "person[s]." *Ibid.* (emphasis added). In other words, the parenthetical clarifes that "a government" includes both individuals who are offcials acting under color of law *and* other, additional individuals who are nonoffcials acting under color of law. Here, respondents sued the former.

The legal "backdrop against which Congress enacted" RFRA confrms the propriety of individual-capacity suits. *Stewart* v. *Dutra Constr. Co.*, 543 U. S. 481, 487 (2005). The phrase "persons acting under color of law" draws on one of the most well-known civil rights statutes: 42 U. S. C. §1983. That statute applies to "person[s] . . . under color of any statute," and this Court has long interpreted it to permit suits against offcials in their individual capacities. See, *e. g.*, *Memphis Community School Dist.* v. *Stachura*, 477 U. S. 299, 305–306, and n. 8 (1986). Because RFRA uses the same terminology as §1983 in the very same feld of civil rights law, "it is reasonable to believe that the terminology bears a consistent meaning." A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 323 (2012). A suit against an offcial in his personal capacity is a suit against a person acting under color of law. And a suit against a person acting under color of law is a suit against "a government," as defned under RFRA. §2000bb–1(c).

B

The question then becomes what "appropriate relief" entails. Without a statutory defnition, we turn to the phrase's plain meaning at the time of enactment. See *FCC* v. *AT&T Inc.*, 562 U. S. 397, 403 (2011). "Appropriate" means "[s]pecially ftted or suitable, proper." 1 Oxford English Dictionary, at 586; see also Merriam-Webster's Collegiate Diction-

ary 57 (10th ed. 1996) ("especially suitable or compatible"). Because this language is "open-ended" on its face, what relief is "`appropriate'" is "inherently context dependent." *Sossamon* v. *Texas*, 563 U. S. 277, 286 (2011) (interpreting identical language).

In the context of suits against Government offcia ls, damages have long been awarded as appropriate relief. In the early Republic, "an array of writs . . . allowed individuals to test the legality of government conduct by f ling suit against government offcia ls" for money damages "payable by the offcer." Pfander & Hunt, Public Wrongs and Private Bills: Indemnifcati on and Govt Accountability in the Early Republic, 85 N. Y. U. L. Rev. 1862, 1871–1875 (2010); see *id.*, at 1875, n. 52 (collecting cases). These common-law causes of action remained available through the 19th century and into the 20th. See, *e. g.*, *Little* v. *Barreme*, 2 Cranch 170 (1804); *Elliott* v. *Swartwout*, 10 Pet. 137 (1836); *Mitchell* v. *Harmony*, 13 How. 115 (1852); *Buck* v. *Colbath*, 3 Wall. 334 (1866); *Belknap* v. *Schild*, 161 U. S. 10 (1896); *Philadelphia Co.* v. *Stimson*, 223 U. S. 605, 619–620 (1912) ("The exemption of the United States from suit does not protect its offcers from personal liability to persons whose rights of property they have wrongfully invaded").

Though more limited, damages against federal offcia ls remain an appropriate form of relief today. In 1988 the Westfall Act foreclosed common-law claims for damages against federal offcia ls, 28 U. S. C. §2679, but it left open claims for constitutional violations and certain statutory violations. §§2679(b)(2)(A)–(B). Indeed, the Act expressly contemplates that a statute could authorize an action for damages against Government employees. §2679(b)(2)(B) (explaining that the displacement of remedies "does not extend or apply to a civil action against an employee of the Government . . . which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized").

Damages are also commonly available against state and local government offcia ls. In 1871, for example, Congress passed the precursor to § 1983, imposing liability on any person who, under color of state law, deprived another of a constitutional right. 17 Stat. 13; see also *Myers* v. *Anderson*, 238 U. S. 368, 379, 383 (1915) (affr ming award of damages against state election offcia ls). By the time Congress enacted RFRA, this Court had interpreted the modern version of § 1983 to permit monetary recovery against offcia ls who violated "clearly established" federal law. *E. g.*, *Procunier* v. *Navarette*, 434 U. S. 555, 561–562 (1978); *Siegert* v. *Gilley*, 500 U. S. 226, 231 (1991).

This availability of damages under § 1983 is particularly salient in light of RFRA's origins. When frst enacted, RFRA def ned "`government'" to include an "offcia l (or other person acting under color of law) of the United States, *a State, or a subdivision of a State*." 107 Stat. 1489 (emphasis added). It made no distinction between state and federal offcia ls. After this Court held that RFRA could not be enforced against the States, see *City of Boerne* v. *Flores*, 521 U. S. 507, 511 (1997), Congress narrowly amended the def nition "by striking `a State, or a subdivision of a State.'" 114 Stat. 806. That context is important because RFRA made clear that it was reinstating both the pre-*Smith* substantive protections of the First Amendment *and* the right to vindicate those protections by a claim. § 2000bb(b). There is no doubt that damages claims have always been available under § 1983 for clearly established violations of the First Amendment. See, *e. g.*, *Sause* v. *Bauer*, 585 U. S. 957 (2018) (*per curiam*) (reversing grant of qualifed immunity in a case seeking damages under § 1983 based on alleged violations of free exercise rights and Fourth Amendment rights); *Murphy* v. *Missouri Dept. of Corrections*, 814 F. 2d 1252, 1259 (CA8 1987) (remanding to enter judgment for plaintiffs on a § 1983 free speech and free exercise claims and to determine and order "appropriate relief, which . . . may, if appropriate, in-

clude an award" of damages). Given that RFRA reinstated pre-*Smith* protections and rights, parties suing under RFRA must have at least the same avenues for relief against officials that they would have had before *Smith*. That means RFRA provides, as one avenue for relief, a right to seek damages against Government employees.

A damages remedy is not just "appropriate" relief as viewed through the lens of suits against Government employees. It is also the *only* form of relief that can remedy some RFRA violations. For certain injuries, such as respondents' wasted plane tickets, effective relief consists of damages, not an injunction. See, *e. g.*, *DeMarco* v. *Davis*, 914 F. 3d 383, 390 (CA5 2019) (destruction of religious property); *Yang* v. *Sturner*, 728 F. Supp. 845 (RI 1990), opinion withdrawn 750 F. Supp. 558 (RI 1990) (autopsy of son that violated Hmong beliefs). Given the textual cues just noted, it would be odd to construe RFRA in a manner that prevents courts from awarding such relief. Had Congress wished to limit the remedy to that degree, it knew how to do so. See, *e. g.*, 29 U. S. C. § 1132(a)(3) (providing for "appropriate equitable relief"); 42 U. S. C. § 2000e–5(g)(1) (providing for "equitable relief as the court deems appropriate"); 15 U. S. C. § 78u(d)(5) (providing for "any equitable relief that may be appropriate or necessary").*

Our opinion in *Sossamon* does not change this analysis. *Sossamon* held that a State's acceptance of federal funding did not waive sovereign immunity to suits for damages under a related statute—the Religious Land Use and Institutional-

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*Both the Government and respondents agree that government offcia ls are entitled to assert a qualifed immunity defense when sued in their individual capacities for money damages under RFRA. Indeed, respondents emphasize that the "qualifed immunity defense was created for precisely these circumstances," Brief for Respondents 22, and is a "powerful shield" that "protects all but the plainly incompetent or those who fout clearly established law," Tr. of Oral Arg. 42; see *District of Columbia* v. *Wesby*, 583 U. S. 48, 62–64 (2018).

ized Persons Act of 2000—which also permits "`appropriate relief.'" 563 U. S., at 280, 282. The obvious difference is that this case features a suit against individuals, who do not enjoy sovereign immunity.

The Government also posits that we should be wary of damages against government offcia ls because these awards could raise separation-of-powers concerns. But this exact remedy has coexisted with our constitutional system since the dawn of the Republic. To be sure, there may be policy reasons why Congress may wish to shield Government employees from personal liability, and Congress is free to do so. But there are no constitutional reasons why we must do so in its stead.

To the extent the Government asks us to create a new policy-based presumption against damages against individual offcia ls, we are not at liberty to do so. Congress is best suited to create such a policy. Our task is simply to interpret the law as an ordinary person would. Although background presumptions can inform the understanding of a word or phrase, those presumptions must exist at the time of enactment. We cannot manufacture a new presumption now and retroactively impose it on a Congress that acted 27 years ago.

* * *

We conclude that RFRA's express remedies provision permits litigants, when appropriate, to obtain money damages against federal offcia ls in their individual capacities. The judgment of the United States Court of Appeals for the Second Circuit is affr med.

It is so ordered.

JUSTICE BARRETT took no part in the consideration or decision of this case.

Syllabus

CARNEY, GOVERNOR OF DELAWARE *v.* ADAMS

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

No. 19–309. Argued October 5, 2020—Decided December 10, 2020

Delaware's Constitution contains a political balance requirement for appointments to the State's major courts. No more than a bare majority of judges on any of its fve major courts "shall be of the same political party." Art. IV, § 3. In addition, on three of those courts, those members not in the bare majority "shall be of the other major political party." *Ibid.* Respondent James R. Adams, a Delaware lawyer and political independent, sued in Federal District Court, claiming that Delaware's "bare majority" and "major party" requirements violate his First Amendment right to freedom of association by making him ineligible to become a judge unless he joins a major political party. The District Court held that Adams had standing to challenge both requirements and that Delaware's balancing scheme was unconstitutional. The Third Circuit affr med in part and reversed in part. It held that Adams did have standing to challenge the major party requirement, because it categorically excludes independents from becoming judges on three courts, but that he lacked standing to challenge the bare majority requirement, which does not preclude independents from eligibility for any vacancy.

Held: Because Adams has not shown that he was "able and ready" to apply for a judicial vacancy in the imminent future, he has failed to show a "personal," "concrete," and "imminent" injury necessary for Article III standing. Pp. 58–66.

(a) Two aspects of standing doctrine are relevant here. First, standing requires an "`injury in fact' " that must be "concrete and particularized," as well as "`actual or imminent.' " *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560. Second, a grievance that amounts to nothing more than an abstract and generalized harm to a citizen's interest in the proper application of the law does not count as an "injury in fact" and does not show standing. *Hollingsworth* v. *Perry*, 570 U. S. 693, 706. Pp. 58–59.

(b) Adams has not shown the necessary "injury in fact." To establish that he will suffer a concrete, particularized, and imminent injury beyond a generalized grievance, Adams must at least show that he is likely to apply to become a judge in the reasonably foreseeable future, if he were not barred because of political aff liation. He can show this only

Syllabus

if he is "`able and ready'" to apply. See *Gratz* v. *Bollinger*, 539 U. S. 244, 262. Adams' only supporting evidence is two statements he made that he wanted to be, and would apply to be, a judge on any of Delaware's five courts. Those statements must be considered in the context of the record. Pp. 59–63.

(c) The record evidence fails to show that, at the time he commenced the lawsuit, Adams was "able and ready" to apply for a judgeship in the reasonably foreseeable future. First, Adams' statements stand alone, without any other supporting evidence, like efforts to determine possible judicial openings or other such preparations. Second, the context suggests an abstract, generalized grievance, not an actual desire to become a judge. For example, Adams did not apply for numerous existing judicial vacancies while he was a registered Democrat and eligible for those vacancies. He then read a law review article arguing that Delaware's judicial eligibility requirements unconstitutionally excluded independents, changed his political affiliation to independent, and filed this lawsuit shortly thereafter. Third, a holding that Adams' few words of general intent were sufficient to show an "injury in fact" would significantly weaken the longstanding legal doctrine preventing this Court from providing advisory opinions. Finally, precedent supports the conclusion that an injury in fact requires an intent that is concrete. See, *e. g.*, *Lujan*, *supra*. And arguably similar cases in which standing was found all contained more evidence that the plaintiff was "able and ready" than Adams has provided. See, *e. g.*, *Adarand Constructors, Inc.* v. *Peña*, 515 U. S. 200. Pp. 63–66.

922 F. 3d. 166, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which all other Members joined, except BARRETT, J., who took no part in the consideration or decision of the case. SOTOMAYOR, J., filed a concurring opinion, *post*, p. 66.

Michael W. McConnell argued the cause for petitioner. With him on the briefs were *Steffen N. Johnson*, *Brian J. Levy*, *Randy J. Holland*, *David C. McBride*, *Martin S. Lessner*, and *Pilar G. Kraman*.

David L. Finger argued the cause and filed a brief for respondent.*

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*Briefs of *amici curiae* urging reversal were filed for the Brennan Center for Justice at NYU School of Law by *Richard W. Clary* and *Wendy R. Weiser*; for the Campaign Legal Center by *Caitlin Halligan*, *Philippe*

JUSTICE BREYER delivered the opinion of the Court.

This case concerns a Delaware constitutional provision that requires that appointments to Delaware's major courts reflect a partisan balance. Delaware's Constitution states that no more than a bare majority of members of any of its five major courts may belong to any one political party. Art. IV, §3. It also requires, with respect to three of those courts, that the remaining members belong to "the other major political party." *Ibid.*

The plaintiff, a Delaware lawyer, brought this lawsuit in federal court. He claimed that Delaware's party-membership requirements for its judiciary violate the Federal Constitution. We agreed to consider the constitutional question, but only if the plaintiff has standing to raise that question. We now hold that he does not.

I

The Delaware Constitution contains a political balance requirement applicable to membership on all five of its courts:

Selendy, *Paul M. Smith*, *Adav Noti*, and *Erin Chlopak*; for the Chamber of Commerce of the United States of America by *Gregory G. Garre* and *Daryl Joseffer*; for the Delaware State Bar Association by *Richard A. Forsten*, *William E. Manning*, and *James D. Taylor, Jr.*; for Former Chief Justices of the Delaware Supreme Court by *Virginia A. Seitz* and *Kathleen Moriarty Mueller*; for Former Governors of the State of Delaware by *Theodore N. Mirvis* and *Kevin S. Schwartz*; for the Republican National Committee by *Richard B. Raile* and *Katherine L. McKnight*; for State and Local Government Associations by *Kirti Datla* and *Lisa Soronen*; and for Brian D. Feinstein et al. by *Eric F. Citron* and *Erica Oleszczuk Evans*.

Briefs of *amici curiae* urging affirmance were filed for Lawyers and Professors by *Joel Edan Friedlander*; for the Libertarian National Committee by *Oliver B. Hall*; and for Public Citizen by *Kaitlin E. Leary*, *Scott L. Nelson*, *Allison M. Zieve*, and *Alan B. Morrison*.

Briefs of *amici curiae* were filed for the Cato Institute by *Eugene Volokh* and *Ilya Shapiro*; for the Conference of Chief Justices by *Robert L. Byer* and *Keith R. Fisher*; for Professors et al. by *Rodney A. Smolla*, *pro se*; and for Anthony Daunt et al. by *Jason Torchinsky*.

the Supreme Court, the Chancery Court, the Superior Court, the Family Court, and the Court of Common Pleas. The provision says that no more than a bare majority of judges on any of these courts "shall be of the same political party." *Ibid.* (We shall call this requirement the "bare majority" requirement.) The Delaware Constitution also contains a second requirement applicable only to the Supreme Court, the Chancery Court, and the Superior Court. It says that the remaining members of those three courts (those not in the bare majority) "shall be of the other major political party." *Ibid.* (We shall call this the "major party" requirement.) Thus, all fve courts are subject to the "bare majority" requirement, and three of the fve courts are additionally subject to the "major party" requirement.

On February 21, 2017, plaintiff-respondent James R. Adams sued Delaware's Governor, John Carney, in Federal District Court. Adams, then a newly registered political independent, claimed that both of Delaware's political balance requirements violated his First Amendment right to freedom of association by making him ineligible to become a judge unless he rejoined a major political party.

Governor Carney moved to dismiss for lack of standing, and Adams f led an amended complaint in an attempt to rectify the problem. App. 1–2, 17–18. After discovery largely centered on Adams' history and intentions in seeking a judgeship, the parties cross-moved for summary judgment. Governor Carney argued (1) that Adams lacked standing to assert his constitutional claim, and (2) that, in any event, the requirements were constitutional. Adams argued only that he was entitled to summary judgment on the merits because the political balance requirements made independents like him ineligible for a judgeship.

The District Court denied Governor Carney's summary judgment motion. *Id.*, at 165; App. to Pet. for Cert. 83a. It held that Adams had standing to challenge both the "major party" requirement for membership on the Supreme Court, the Chancery Court, and the Superior Court and the "bare

majority" requirement for membership on the Family Court and the Court of Common Pleas. App. 173–175; App. to Pet. for Cert. 70a–72a. It then granted summary judgment to Adams on the merits, App. 165; App. to Pet. for Cert. 83a, holding that Delaware's balancing scheme as a whole was unconstitutional, App. 175–181; App. to Pet. for Cert. 75a–81a.

Governor Carney appealed to the United States Court of Appeals for the Third Circuit. The appellate court affr med in part and reversed in part. *Adams* v. *Governor of Del.*, 922 F. 3d 166 (2019). Like the District Court, it held that Adams had standing to challenge the major party requirement, *id.*, at 175, but unlike the District Court, it held that Adams did not have standing to challenge the bare majority requirement (in any of the fve courts), *id.*, at 174–175. The court held that the bare majority requirement itself does not preclude independents from eligibility for any vacancy. *Ibid.*

The court then focused on the major party requirement, which applies only to three of the fve courts. Did that constitutional provision bar independent voters from becoming judges on those courts? If so, was that bar constitutional? If not, was that provision severable from the rest of the Delaware Constitution's political balance provisions, in particular, from the bare majority requirement as applied to the Supreme Court, the Chancery Court, and the Superior Court?

The Third Circuit concluded that the major party requirement categorically excludes independents and members of third parties from becoming judges on the Supreme Court, the Chancery Court, and the Superior Court. 922 F. 3d, at 182–183. It held that the major party requirement consequently violates the Federal Constitution's First Amendment. *Ibid.* And it held that the major party requirement is not severable from the bare majority requirement. *Id.*, at 183–184. The Circuit concluded that both requirements (as applied to those three courts) are invalid. *Ibid.*

Governor Carney then f led a petition for a writ of certiorari. He asked us to consider, frst, whether the major party

requirement is constitutional and, then, if it is not, whether it is severable from the bare majority requirement. Pet. for Cert. i. We granted his petition but asked that the parties frst address the question whether Adams has demonstrated Article III standing to bring this lawsuit.

II

A

This case begins and ends with standing. The Constitution grants Article III courts the power to decide "Cases" or "Controversies." Art. III, § 2. We have long understood that constitutional phrase to require that a case embody a genuine, live dispute between adverse parties, thereby preventing the federal courts from issuing advisory opinions. See *Flast* v. *Cohen*, 392 U. S. 83, 96–97 (1968); *Coleman* v. *Miller*, 307 U. S. 433, 460 (1939) (opinion of Frankfurter, J.) ("[I]t was not for courts to pass upon . . . abstract, intellectual problems but only if a concrete, living contest between adversaries called for the arbitrament of law"). The doctrine of standing implements this requirement by insisting that a litigant "prove that he has suffered a concrete and particularized injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a favorable judicial decision." *Hollingsworth* v. *Perry*, 570 U. S. 693, 704 (2013); *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560–561 (1992).

Two aspects of standing doctrine are relevant here. First, standing requires an "`injury in fact'" that must be "concrete and particularized," as well as "`actual or imminent.'" *Id.*, at 560. It cannot be "`"conjectural or hypothetical."'" *Ibid.* Second, a grievance that amounts to nothing more than an abstract and generalized harm to a citizen's interest in the proper application of the law does not count as an "injury in fact." And it consequently does not show standing. *Hollingsworth, supra*, at 706; see also *Lance* v. *Coffman*, 549 U. S. 437, 439–441 (2007) (*per curiam*)

(describing this Court's "lengthy pedigree" in refusing to serve as a forum for generalized grievances).

In other words, a plaintiff cannot establish standing by asserting an abstract "general interest common to all members of the public," *id.*, at 440, "no matter how sincere" or "deeply committed" a plaintiff is to vindicating that general interest on behalf of the public, *Hollingsworth*, *supra*, at 706–707. Justice Powell explained the reasons for this limitation. He found it "inescapable" that to find standing based upon that kind of interest "would signifcantly alter the allocation of power at the national level, with a shift away from a democratic form of government." *United States* v. *Richardson*, 418 U. S. 166, 188 (1974) (concurring opinion). He added that "[w]e should be ever mindful of the contradictions that would arise if a democracy were to permit general oversight of the elected branches of government by a nonrepresentative, and in large measure insulated, judicial branch." *Ibid.*; see also *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U. S. 208, 222 (1974); *Warth* v. *Seldin*, 422 U. S. 490, 500 (1975). Cf. *Federal Election Comm'n* v. *Akins*, 524 U. S. 11, 21–25 (1998) (finding standing where a group of voters suffered *concrete*, though widespread, harm when they were prevented from accessing publicly disclosable voting-related material).

B

We here must ask whether Adams established that, at the time he filed suit, Delaware's major party provision caused him a concrete, particularized "injury in fact" over and above the abstract generalized grievance suffered by all citizens of Delaware who (if Adams is right) must live in a State subject to an unconstitutional judicial selection criterion. We have examined the record that was before the District Court at summary judgment, keeping in mind that Adams bears the burden of establishing standing as of the time he brought this lawsuit and maintaining it thereafter. *Lujan*, *supra*,

at 561 (plaintiff bears the burden of proving standing); *Friends of the Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 191 (2000) (standing is assessed "at the time the action commences"); *id.*, at 189 ("`The requisite personal interest that must exist at the commencement of the litigation . . . must continue throughout its existence'"); see also *Lujan*, *supra*, at 569, n. 4. And we conclude that Adams did not show the necessary "injury in fact."

Adams suffered a "generalized grievance" of the kind we have just described. He, like all citizens of Delaware, must live and work within a State that (in his view) imposes unconstitutional requirements for eligibility on three of its courts. Lawyers, such as Adams, may feel sincerely and strongly that Delaware's laws should comply with the Federal Constitution. Accord, *Hollingsworth*, 570 U. S., at 706. But that kind of interest does not create standing. Rather, the question is whether Adams will suffer a "`personal and individual'" injury beyond this generalized grievance—an injury that is concrete, particularized, and imminent rather than "conjectural or hypothetical." *Id.*, at 705–706.

Adams says he has. He claims that Delaware's major party requirement in fact prevents him, a political independent, from having his judicial application considered for three of Delaware's courts. To prove this kind of harm, however, Adams must at least show that he is likely to apply to become a judge in the reasonably foreseeable future if Delaware did not bar him because of political affiliation. And our cases make clear that he can show this only if he is "`able and ready'" to apply. See *Gratz* v. *Bollinger*, 539 U. S. 244, 262 (2003); *Northeastern Fla. Chapter, Associated Gen. Contractors of America* v. *Jacksonville*, 508 U. S. 656, 666 (1993). We have examined the summary judgment record to determine whether Adams made this showing. And, as we have said, we conclude that he has not.

The only evidence supporting Adams is two statements he made in his deposition and in his answer to interrogatories

that he wants to be, and would apply to be, a judge on any of Delaware's fve courts. He said:

> "I would apply for any judicial position that I thought I was qualifed for, and I believe I'm qualifed for any position that would come up . . . [o]n any of the courts. I would feel less comfortable on Chancery than any other court. I would feel most comfortable on Superior Court, Family Court, Court of Common Pleas, state Supreme Court based on my background, experience, and what I have done in my career." App. 34.

He added in his answer to interrogatories:

> "Adams . . . would seriously consider and apply for any judicial position for which he feels he is qualifed. . . . Adams believes that he meets the minimum qualifca - tions to apply for any judicial offcer position." *Id.*, at 62–63.

Those statements, however, must be considered in the context of the record, which contains evidence showing that, at the time he brought this lawsuit, Adams was not "able and ready" to apply.

First, the record showed that, between 2012 and 2016, during which time Adams was a practicing lawyer and a registered Democrat, Delaware's fve courts had a combined total of 14 openings for which Adams, then a Democrat, would have been eligible. *Id.*, at 51–56, 144–164. Yet he did not apply for any of them. When deposed during discovery, Adams said that in 2014 he had wanted to apply for a Supreme Court or Superior Court judgeship. *Id.*, at 35, 43–46, 62. Adams said that he could not do so because only Republicans were eligible for those positions that year. *Ibid.* He was wrong about that. In particular, there were three vacancies on those two courts in 2014 for which he, as a Democrat, was eligible. *Id.*, at 51–54. Adams later conceded that he had indeed been eligible to apply for those vacancies, but he had not done so. *Id.*, at 43–46.

Second, on December 31, 2015, after roughly 12 years as a lawyer for the Delaware Department of Justice, Adams retired. *Id.*, at 32, 58. In February 2016, Adams changed his bar membership from "Active" to "Emeritus" status. *Id.*, at 61. He then returned to "Active" status in January 2017. *Ibid.* In his deposition, he stated that at about that same time in the "[b]eginning of the year, January/February," he read a law review article arguing that Delaware's judicial eligibility requirements were unconstitutional because they excluded independents. *Id.*, at 38; see Friedlander, Is Delaware's "Other Major Political Party" Really Entitled to Half of Delaware's Judiciary? 58 Ariz. L. Rev. 1139 (2016). Adams called the article's author and said, "`I just read your Law Review . . . article. I'd like to pursue this.'" App. 38. The author suggested several attorneys who might handle the matter. *Ibid.*

Third, shortly thereafter, on February 13, 2017, Adams changed his political affiliation from Democrat to unaffiliated independent. *Id.*, at 67. Before that, he had been a Democrat his "whole life" and actively involved in the Delaware Democratic Party. *Id.*, at 41. Leaving the party made it less likely that he would become a judge. But doing so made it possible for him to vindicate his view of the law as set forth in the article.

Fourth, after Adams became a political independent on February 13, 2017, he filed this lawsuit eight days later on February 21. *Id.*, at 1.

Fifth, Adams said in his answer to interrogatories that he "has no knowledge of what judicial positions may become open in the next year." *Id.*, at 62.

Sixth, other than the act of filing the lawsuit itself, the summary judgment record contains no evidence of conversations or other actions taken by Adams suggesting that he was "able and ready" to apply for a judgeship.

During his deposition, Adams provided explanations for this negative evidence. He said that his failure to apply for

available judgeships at the time when he was eligible reflected his lack of interest in being a judge at that time. He was then content to work at the Department of Justice. *Id.*, at 35; Brief for Respondent 17–18. Adams added that his return from retirement to "Active" bar membership in 2017 showed that he decided on becoming a judge later in life and after a change in administration at the Delaware Department of Justice. App. 33. (Adams did not explain his failure to apply in 2014, though, when, he said, he *was* interested in a judgeship.) Adams further explained that his contemporaneous change of political affiliation was because he "tend[s] to be much more progressive and liberal than [D]emocrats in Delaware." *Id.*, at 41. Although he had been a lifelong Democrat, and actively involved with the Delaware Democratic Party, he said then that he "probably consider[s]" himself "more of a Bernie [Sanders] independent." *Id.*, at 42. Finally, in Adams' view, the lack of other evidence proves little or nothing about his intentions.

C

This is a highly fact-specific case. In our view, three considerations, taken together, convince us that the record evidence fails to show that, at the time he commenced the lawsuit, Adams was "able and ready" to apply for a judgeship in the reasonably foreseeable future. First, as we have just laid out, Adams' words "I would apply . . . " stand alone without any actual past injury, without reference to an anticipated timeframe, without prior judgeship applications, without prior relevant conversations, without efforts to determine likely openings, without other preparations or investigations, and without any other supporting evidence.

Second, the context offers Adams no support. It suggests an abstract, generalized grievance, not an actual desire to become a judge. Indeed, Adams' failure to apply previously when he was eligible, his reading of the law review article, his change of party affiliation, and his swift subsequent filing

of the complaint show a desire to vindicate his view of the law, as articulated in the article he read.

Third, if we were to hold that Adams' few words of general intent—without more and against all contrary evidence—were suffcient here to show an "injury in fact," we would signifcantly weaken the longstanding legal doctrine preventing this Court from providing advisory opinions at the request of one who, without other concrete injury, believes that the government is not following the law. Adams did not show that he was "able and ready" to apply for a vacancy in the reasonably imminent future. Adams has not suffciently differentiated himself from a general population of individuals affected in the abstract by the legal provision he attacks. We do not decide whether a statement of intent alone under other circumstances could be enough to show standing. But we are satisfed that Adams' words alone are not enough here when placed in the context of this particular record.

Precedent supports the conclusion that an injury in fact requires an intent that is concrete. In *Lujan*, for example, organizations dedicated to wildlife conservation sought to enjoin enforcement of a federal regulation that they believed would unlawfully harm endangered species. *Lujan*, 504 U. S., at 563–564. The organizations' members had previously visited the species' habitats abroad, and they said that they intended to return to those foreign habitats in the future. *Ibid.* This Court recognized that having to view a species-impoverished habitat could constitute a cognizable injury. *Id.*, at 562–563. But it pointed out that the plaintiffs had not described any concrete plans to visit those habitats, nor had they said when they would do so. *Id.*, at 563–564. The Court said that the organizations had set forth only "`some day' intentions." *Id.*, at 564. And "some day intentions" do "not support a f nding of the `actual or imminent' injury that our cases require." *Ibid.*

For another thing, arguably similar cases in which this Court has found standing all contained more evidence that

the plaintiff was "able and ready" than Adams has provided here. In *Adarand Constructors, Inc.* v. *Peña*, 515 U. S. 200 (1995), for example, a subcontractor challenging a race-based program for allocating contracts established standing by showing that it "bids on every guardrail project in Colorado," that the defendant "is likely to let contracts involving guardrail work . . . at least once per year in Colorado," and that the plaintiff "is very likely to bid on each such contract." *Id.*, at 212.

In *Associated Gen. Contractors*, 508 U. S., at 666, the Court held that an association of contractors had standing to attack as unlawful a race-based set-aside program for awarding contracts. The contractors showed that they were "able and ready to bid on [future] contracts," for it was undisputed that they had "regularly bid on construction contracts in Jacksonville, and that they would have bid on contracts set aside pursuant to the city's ordinance were they so able." *Id.*, at 666, 668. The Court noted that it "must assume that [these allegations] are true" because they were not challenged in any way. *Id.*, at 668–669.

In *Gratz*, 539 U. S., at 262, we held that a plaintiff had standing to attack as unlawful a university's affr mative action admissions policy. The plaintiff had applied for admission to the university as a freshman applicant in the recent past and been rejected. *Ibid.* He said he intended to apply to transfer to the university in the near future, should the university cease using affr mative action in its transfer admissions process. *Ibid.* And the university had a "rolling" transfer program open for application each year, so there was no doubt that the plaintiff's injury was imminent. *Id.*, at 256. The Court therefore concluded that he was "`able and ready' " to apply as a transfer student. *Id.*, at 262. Unlike Adams, none of these plaintiffs relied on a bare statement of intent alone against the context of a record that shows nothing more than an abstract generalized grievance. Rather, each introduced at least some evidence that, *e. g.*,

they had applied in the past, there were regular opportunities available with relevant frequency, and they were "able and ready" to apply for them.

By way of contrast, our precedents have also said that a plaintiff need not "translat[e]" his or her "desire for a job . . . into a formal application" where that application would be merely a "futile gesture." *Teamsters* v. *United States*, 431 U. S. 324, 365–366 (1977); see also *Sporhase* v. *Nebraska ex rel. Douglas*, 458 U. S. 941, 944, n. 2 (1982). And we have said that an "aggrieved party `need not allege that he would have obtained the beneft but for the [unlawful] barrier in order to establish standing.' " *Adarand Constructors*, *supra*, at 211; see also *Gratz*, *supra*, at 262; *Associated Gen. Contractors*, *supra*, at 666. We do not here depart from or modify these or any other of the precedents to which we have referred.

Rather, our holding follows from a straightforward application of precedent to the particular summary judgment record before us. And, as we have explained, in the context set forth by the evidence, Adams has not shown that he was "able and ready" to apply in the imminent future. Consequently, he has failed to show that "personal," "concrete," and "imminent" injury upon which our standing precedents insist.

For these reasons, we reverse the Third Circuit's decision in respect to standing, vacate the judgment, and remand with instructions to dismiss the case.

It is so ordered.

JUSTICE BARRETT took no part in the consideration or decision of this case.

JUSTICE SOTOMAYOR, concurring.

I agree that respondent Adams did not demonstrate Article III standing to bring this suit. Because the constitutional questions in this case will likely be raised again, I write separately to highlight two important considerations that may inform their answers.

First, there are potentially material differences between two separate rules the Delaware Constitution imposes on its courts: the "major party" requirement and the "bare majority" requirement. Bare majority requirements preclude any single political party from having more than a bare majority of the seats in a public body. Such requirements have existed in various forums for roughly 150 years, currently feature in a large number of public bodies, and have been shown to help achieve ideological diversity. Major party requirements like Delaware's, by contrast, preclude anyone who is not a member of the two major political parties from serving in a public body. They are far rarer than their bare majority cousins, and they arguably impose a greater burden on First Amendment associational rights. These differences may require distinct constitutional analyses.

Second, that possibility, in turn, raises the question whether Delaware's major party and bare majority requirements are severable from one another, such that one requirement could remain even if the other were constitutionally unenforceable. It is worth noting that federal courts are not ideally positioned to address such a sensitive issue of state constitutional law. They may therefore be well advised to consider certifying such a question to the State's highest court. See *Leavitt* v. *Jane L.*, 518 U. S. 137, 139 (1996) (*per curiam*) ("Severability [of a state statute] is of course a matter of state law"); *Hooper* v. *Bernalillo County Assessor*, 472 U. S. 612, 624 (1985) ("It is for the New Mexico courts to decide, as a matter of state law, whether the state legislature would have enacted the statute without the invalid portion"); see also *Arizonans for Official English* v. *Arizona*, 520 U. S. 43, 77 (1997) (encouraging certifcati on of "novel or unsettled questions of state law" to "hel[p] build a cooperative judicial federalism" (internal quotation marks omitted; alteration in original)); *Elkins* v. *Moreno*, 435 U. S. 647, 662, n. 16 (1978) (certifying a question of state law *sua sponte* because it was "one in which state governments have the highest interest").

Certifcati on may be especially warranted in a case such as this, where invalidating a state constitutional provision would affect the structure of one of the State's three major branches of government.

Syllabus

UNITED STATES *v.* BRIGGS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

No. 19–108. Argued October 13, 2020—Decided December 10, 2020*

The Uniform Code of Military Justice (UCMJ) has long provided that a military offense, "punishable by death, may be tried and punished at any time without limitation." 10 U. S. C. § 843(a). Other military offenses are subject to a 5-year statute of limitations. § 843(b). Respondents are three military service members, each convicted of rape. When they were charged, the UCMJ provided that rape could be "punished by death." § 920(a) (1994 ed.). Because this Court held that the Eighth Amendment forbids a death sentence for the rape of an adult woman, *Coker* v. *Georgia*, 433 U. S. 584, respondents argue that they could not, in fact, have been sentenced to death, and therefore the UCMJ's 5-year statute of limitations applies and bars their convictions. Agreeing, the Court of Appeals for the Armed Forces set aside their convictions.

Held: Respondents' prosecutions for rape under the UCMJ were timely. Pp. 71–78.

(a) Respondents contend that the UCMJ phrase "punishable by death" means capable of punishment by death *when all applicable law is taken into account*. By contrast, the Government sees the phrase as something of a term of art, meaning capable of punishment by death *under the penalty provisions of the UCMJ*. Pp. 71–72.

(b) For three reasons, the phrase's context—appearing in a statute of limitations provision for prosecutions under the UCMJ—weighs heavily in favor of the Government's interpretation. Pp. 72–78.

(1) First, the UCMJ is a uniform code. As such, a natural referent for a statute of limitations provision within the UCMJ is other law in the UCMJ itself. The most natural place to look for Congress's answer to whether rape was "punishable by death" within the meaning of § 843(a) is § 920's directive that rape could be "punished by death." That is so even if the UCMJ's separate prohibition on "cruel or unusual punishment," § 855, would have been held to provide an independent defense against the imposition of the death penalty for rape. Pp. 73–74.

(2) Second, respondents' interpretation of § 843(a) is not the sort of limitations provision that Congress is likely to have chosen. Statutes

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*Together with No. 19–184, *United States* v. *Collins* and *United States* v. *Daniels* (see this Court's Rule 12.4), also on certiorari to the same court.

Syllabus

of limitations typically provide clarity, see *United States* v. *Lovasco*, 431 U. S. 783, 789, and it is reasonable to presume that clarity is an objective when lawmakers enact such provisions. But if "punishable by death" means punishable by death after all applicable law is taken into account, the deadline for f ling rape charges would be unclear. That deadline would depend on an unresolved constitutional question about *Coker*'s application to military prosecutions, on what this Court has described as "`evolving standards of decency' " under the Eighth Amendment, *Kennedy* v. *Louisiana*, 554 U. S. 407, 419, and on whether § 855 of the UCMJ independently prohibits a death sentence for rape. Pp. 74–77.

(3) Third, the ends served by statutes of limitations differ sharply from those served by provisions like the Eighth Amendment or UCMJ § 855. Factors legislators may f nd important in setting a statute of limitations—such as the diffcu lty of gathering evidence and mounting a prosecution—play no part in the Court's Eighth Amendment analysis. Thus, it is unlikely that lawmakers would want to tie a statute of limitations to judicial interpretations of such provisions. Pp. 77–78.

No. 19–108, 78 M. J. 289; No. 19–184, 78 M. J. 415 (frst judgment) and 79 M. J. 199 (second judgment), reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which all other Members joined, except BARRETT, J., who took no part in the consideration or decision of the cases. GORSUCH, J., f led a concurring opinion, *post*, p. 79.

Acting Solicitor General Wall argued the cause for petitioner in both cases. On the briefs were *Solicitor General Francisco*, *Assistant Attorney General Benczkowski*, *Deputy Solicitor General Feigin*, *Christopher G. Michel*, *Rebecca Taibleson*, *Paul T. Crane*, *Mary Ellen Payne*, and *Brian C. Mason*.

Stephen I. Vladeck argued the cause for respondents in both cases. With him on the brief were *Terri R. Zimmermann*, *J. Carl Cecere*, *Mark Schwartz*, *M. Dedra Campbell*, *Johnathan D. Legg*, *David P. Sheldon*, *Tami L. Mitchell*, and *William E. Cassara*.†

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†*Allyson N. Ho*, *Bradley G. Hubbard*, and *Paul G. Cassell* f led a brief of *amici curiae* for Members of Congress urging reversal in both cases.

Jeffrey T. Green f led a brief of *amicus curiae* for the National Association of Criminal Defense Lawyers urging affr mance in both cases.

Briefs of *amici curiae* were f led in both cases for the U. S. Army Defense Appellate Division by *Elizabeth G. Marotta*, *Tiffany D. Pond*, *Jo-*

JUSTICE ALITO delivered the opinion of the Court.

We must decide in these cases whether, under the Uniform Code of Military Justice (UCMJ), a prosecution for a rape committed during the period from 1986 to 2006 had to be commenced within five years of the commission of the charged offense or whether such a prosecution could be brought at any time, as is the rule at present. The Court of Appeals for the Armed Forces (CAAF), reversing its prior decisions on this question, held that the statute of limitations was five years and that it therefore barred the rape convictions of respondents, three military service members. See 78 M. J. 289 (2019); 78 M. J. 415 (2019); 79 M. J. 199 (2019). We granted certiorari, 589 U. S. 1067 (2019), and now reverse.

I

The question before us is important, and there are reasonable arguments on both sides, but resolving the question does not require lengthy analysis. During the period at issue, Article 120(a) of the UCMJ provided that rape could be "punished by death," 10 U. S. C. § 920(a) (1982 ed.); § 920(a) (1994 ed.), and Article 43(a), which was amended in 1986, provided that an offense "punishable by death" could be tried and punished "at any time without limitation," National Defense Authorization Act for Fiscal Year 1987, 100 Stat. 3908; see 10 U. S. C. § 843(a) (1988 ed.). The crux of the question before us is the meaning of the phrase "punishable by death" in the latter provision. Respondents contend—and the CAAF held—that the phrase means capable of punishment by death *when all applicable law is taken into account*. See *United States* v. *Mangahas*, 77 M. J. 220, 224 (2018). Because this Court held in *Coker* v. *Georgia*, 433 U. S. 584, 592 (1977), that the Eighth Amendment forbids a death sentence

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seph C. Borland, Zachary A. Gray, Jason X. Hamilton, Paul T. Shirk, and *Brianna C. Tuohy*; and for Harmony Allen et al. by *Peter Coote* and *Jonathan D. Herbst.*

for the rape of an adult woman, respondents argue that they could not, in fact, have been sentenced to death, and therefore the statute of limitations for their crimes (committed in 1998, 2000, and 2005) was the 5-year statute that generally governed non-capital offenses. See 10 U. S. C. § 843(b)(1) (1994 ed.); § 843(b)(1) (2000 ed.). By contrast, the Government argues that Article 43(a)'s reference to "punishable by death" means capable of punishment by death *under the penalty provisions of the UCMJ*, and since Article 120(a) provided (despite *Coker*) that rape could be punished by death, it follows that there was no time limit for f ling rape charges against respondents.

The interpretation advocated by respondents and adopted by the CAAF f nds support at frst blush in contemporaneous dictionary def nitions of the term "punishable." See 12 Oxford English Dictionary 845 (2d ed. 1989) ("Liable to punishment; capable of being punished. . . . Of an offence: Entailing punishment"); Webster's Third New International Dictionary 1843 (1986) ("deserving of, or liable to, punishment: capable of being punished by law or right"); Black's Law Dictionary 1110 (5th ed. 1979) ("Deserving of or capable or liable to punishment; capable of being punished by law or right"); Random House Dictionary of the English Language 1165 (1966) ("liable to or deserving punishment"). But upon inspection, def nitions shed little light on the dispute because they largely re-raise the question over which the parties divide: capable of being punished under what law? In essence, the Government sees the term "punishable" in Article 43(a) as something of a term of art that is def ned by the specifcati on of the punishments set out in the penalty provisions of the UCMJ.

II

On balance, we f nd the Government's interpretation more persuasive. The meaning of a statement often turns on the context in which it is made, and that is no less true of statu-

tory language. See *Tyler* v. *Cain*, 533 U. S. 656, 662 (2001); *Deal* v. *United States*, 508 U. S. 129, 132 (1993); A. Scalia & B. Garner, Reading Law 167 (2012). And in these cases, context is determinative. The phrase "punishable by death" appears in a statute of limitations provision for prosecutions under the UCMJ, and for at least three reasons, that context weighs heavily in favor of the Government's interpretation.

A

First, a natural referent for a statute of limitations provision within the UCMJ is other law in the UCMJ itself. The UCMJ is, after all, a "uniform code," one that reformed and modernized the old system of military justice "from top to bottom." *Burns* v. *Wilson*, 346 U. S. 137, 141 (1953) (plurality opinion). No one would read Article 43's references to "offense[s]" to include those under state law, for example. Rather, the UCMJ establishes the jurisdiction of general courts-martial "to try persons subject to this chapter for any offense made punishable by this chapter." 10 U. S. C. § 818 (1982 ed.). Courts-martial may then "adjudge any punishment not forbidden by this chapter, including the penalty of death when specifca lly authorized by this chapter." *Ibid.* "[T]his chapter" is the UCMJ, § 801 *et seq.*, and during the relevant time period, provisions within that chapter like Article 120 specifca lly authorized the death penalty for certain serious offenses, see, *e. g.*, § 894 (mutiny or sedition); § 899 (misbehavior before the enemy); § 900 (subordinate compelling surrender); § 901 (improper use of countersign); § 902 (forcing a safeguard); § 904 (aiding the enemy); § 906 (spies); § 918 (murder). When amending Article 43(a), the 1986 Congress appears simply to have saved itself the trouble of maintaining a long list of such offenses. Cf. § 843(a) (1982 ed.) (listing "aiding the enemy, mutiny, or murder"). In the context of the UCMJ, therefore, Article 120's directive that rape could be "punished by death" is the most natural place to look for Congress's answer to whether rape was "punishable by

death" within the meaning of Article 43(a). We think that is so even if, as respondents argue, the separate prohibition on "cruel or unusual punishment" in Article 55 of the UCMJ would have been held to provide an independent defense against the imposition of the death penalty for rape. 10 U. S. C. § 855 (1982 ed.).

B

Second, one principal beneft of statutes of limitations is that typically they provide clarity, see *United States* v. *Lovasco*, 431 U. S. 783, 789 (1977) ("[S]tatutes of limitations . . . provide predictable, legislatively enacted limits on prosecutorial delay . . . "); *Artis* v. *District of Columbia*, 583 U. S. 71, 91 (2018) (noting that one "primary purpos[e]" of limitations statutes in the civil context is "preventing surprises" to defendants (internal quotation marks omitted)), and it is therefore reasonable to presume that clarity is an objective for which lawmakers strive when enacting such provisions. Other things being equal, certainty in statutes of limitations generally serves the interests of all concerned, and that is certainly true with respect to the statute of limitations for rape. For prosecutors handling such cases, it is obviously helpful to know the deadline by which charges must be f led. For persons who know they may be under investigation, a known statute of limitations provides a date after which they may no longer fear arrest and trial. And for rape victims, who often wrestle with the painful decision whether to identify their attackers and press charges, a clear deadline allows them to know by when they must make that choice.

If "punishable by death" in Article 43(a) means punishable by death under the penalty provisions of the UCMJ, the rule regarding the latest possible date for commencing a rape prosecution is clear: The prosecution may be brought "at any time without limitation." By contrast, if "punishable by death" meant punishable by death after all applicable law is taken into account, the deadline for f ling rape charges would be unclear. The deadline would depend on the answer to an

unresolved constitutional question about which the parties in these cases vigorously disagree. Respondents argue that the logic of the decision in *Coker* applies equally to civilian and military prosecutions, but the Government contends that the military context dictates a different outcome. Among other things, the Government argues that a rape committed by a service member may cause special damage by critically undermining unit cohesion and discipline and that, in some circumstances, the crime may have serious international implications.

That also appears to have been the view of Congress and the Executive. After *Coker* was decided in 1977, Congress changed the maximum penalty for rape in civilian cases from death to life imprisonment, see Sexual Abuse Act of 1986, 100 Stat. 3663, but it made no such change in the UCMJ. On the contrary, in 2006 Congress noted that death would remain an available punishment for rape "[u]ntil the President otherwise provide[d]." National Defense Authorization Act for Fiscal Year 2006, 119 Stat. 3263. And Presidents continued until 2016 to provide for death as a permissible punishment for rape under the UCMJ. See Exec. Order No. 13740, 3 CFR 510 (2016).

If Article 43(a) meant what respondents claim and what the CAAF held, Congress would have adopted a statute of limitations provision without knowing with certainty what it would mean. Indeed, Congress would have adopted a statute of limitations provision the meaning of which would not be settled until this Court decided the disputed question of *Coker*'s applicability to the military, and there was no reason to think at the time of Article 43(a)'s amendment in 1986 that this Court would resolve that question any time soon. We have never considered a direct Eighth Amendment challenge to a sentence of death for rape under the UCMJ. And it was predictable that we would not reach the statute of limitations question until cases like those now before us came up for review—that is, until we had occasion to consider

cases in which defendants were convicted after being charged more than fve years after the commission of the offense. That state of affairs virtually guaranteed that the statute of limitations for rape under the UCMJ would be up in the air for years.

And the uncertainty would not end there. This Court has held that the Eighth Amendment incorporates "`*evolving* standards of decency.'" *Kennedy* v. *Louisiana*, 554 U. S. 407, 419 (2008) (quoting *Trop* v. *Dulles*, 356 U. S. 86, 101 (1958) (plurality opinion); emphasis added). Thus, even if we were to hold that rape could be punished by death in the military context, the evolving-standards test could later lead to a different result and thus a different statute of limitations at some point in the future. Such evolution has been held to have occurred on a number of past occasions. Compare *Atkins* v. *Virginia*, 536 U. S. 304, 321 (2002) (Eighth Amendment prohibits death penalty for defendant described as mentally retarded), with *Penry* v. *Lynaugh*, 492 U. S. 302, 340 (1989) (Eighth Amendment permits death penalty for such a defendant); compare also *Roper* v. *Simmons*, 543 U. S. 551, 574–575 (2005) (Eighth Amendment prohibits death penalty for crime committed by person under 18 years of age), with *Stanford* v. *Kentucky*, 492 U. S. 361, 380 (1989) (Eighth Amendment permits death penalty for defendants who are at least 16 years of age).

Finally, if "punishable by death" under Article 43(a) meant punishable by death when all applicable law is taken into account, the statute of limitations would also turn on whether, as respondents now maintain, Article 55 of the UCMJ independently prohibits a death sentence for rape. Article 55 forbids "cruel or unusual punishment[s]," 10 U. S. C. § 855; § 855 (1982 ed.), and here again respondents and the Government offer different interpretations. Respondents argue that Article 55 of its own force applies *Coker*'s rule to the military, while the Government maintains that Article 55 cannot reasonably be read to forbid a pun-

ishment that another provision of the UCMJ specifca lly authorizes.

In short, if we accepted the interpretation of Article 43(a) adopted by the CAAF and defended by respondents, we would have to conclude that this provision set out a statute of limitations that no one could have understood with any real confdence until important and novel legal questions were resolved by this Court. That is not the sort of limitations provision that Congress is likely to have chosen.

C

Third, the factors that lawmakers are likely to take into account when fxi ng the statute of limitations for a crime differ signifcantly from the considerations that underlie our Eighth Amendment decisions. We therefore should not lightly assume that Congress tied the meaning of the statutes of limitations in Article 43 to the Eighth Amendment. One factor that legislators may f nd important in setting the statute of limitations for a crime is the diffcu lty of gathering evidence and mounting a prosecution for that offense. This factor may have been infuentia l in calibrating the statutes of limitations for rape and other sexual offenses in more recent years. The trauma inf icted by such crimes may impede the gathering of the evidence needed to bring charges. Victims may be hesitant for some time after the offense about agreeing to testify. Thus, under current federal law, many such offenses are subject to no statute of limitations. See 18 U. S. C. § 3299 (permitting prosecution at any time for felonies under §§ 2241–2248, 2251–2256, 2258–2260A, and 2421–2429); see also 10 U. S. C. § 843(a) (expressly setting no limitations period under UCMJ for prosecuting rape, sexual assault, and rape or sexual assault of a child).

This factor—the diffcu lty of assembling evidence and putting together a prosecution—obviously plays no part in our Eighth Amendment analysis. As noted, in deciding whether the Eighth Amendment permits a death sentence for a

particular category of offenses or offenders, the Court has looked to evolving societal standards of decency and has also rendered its own independent judgment about whether a death sentence would aptly serve the recognized purposes of criminal punishment in certain categories of cases. See *Kennedy*, 554 U. S., at 419–421, 441–446; *Roper*, 543 U. S., at 561, 571–575; *Atkins*, 536 U. S., at 318–321. Some Justices have eschewed aspects of those approaches and have looked instead to the original understanding of the Eighth Amendment. See, *e. g.*, *Graham* v. *Florida*, 560 U. S. 48, 99–102 (2010) (THOMAS, J., dissenting); *Atkins*, 536 U. S., at 348–349 (Scalia, J., dissenting); *Thompson* v. *Oklahoma*, 487 U. S. 815, 864, 872–873 (1988) (same); cf. *Glossip* v. *Gross*, 576 U. S. 863, 894, 898–899 (2015) (Scalia, J., concurring). But under either method, the inquiry is quite different from the one that a lawmaker might make in fxi ng a statute of limitations. Accordingly, since the ends served by statutes of limitations differ sharply from those served by provisions like the Eighth Amendment or Article 55 of the UCMJ, it is unlikely that lawmakers would want to tie a statute of limitations to judicial interpretations of such provisions.

* * *

Viewing Article 43(a) in context, we are convinced that "punishable by death" is a term of art that is def ned by the provisions of the UCMJ specifying the punishments for the offenses it outlaws. And under this interpretation, respondents' prosecutions were timely.

The judgments of the CAAF are reversed, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE BARRETT took no part in the consideration or decision of these cases.

JUSTICE GORSUCH, concurring.

I continue to think this Court lacks jurisdiction to hear appeals directly from the CAAF. See *Ortiz* v. *United States*, 585 U. S. 427, 463 (2018) (ALITO, J., dissenting). But a majority of the Court believes we have jurisdiction, and I agree with the Court's decision on the merits. I therefore join the Court's opinion.

Syllabus

RUTLEDGE, ATTORNEY GENERAL OF ARKANSAS *v.* PHARMACEUTICAL CARE MANAGEMENT ASSOCIATION

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

No. 18–540. Argued October 6, 2020—Decided December 10, 2020

Pharmacy beneft managers (PBMs) act as intermediaries between pharmacies and prescription-drug plans. In that role, they reimburse pharmacies for the cost of drugs covered by prescription-drug plans. To determine the reimbursement rate for each drug, PBMs develop and administer maximum allowable cost (MAC) lists. In 2015, Arkansas passed Act 900, which effectively requires PBMs to reimburse Arkansas pharmacies at a price equal to or higher than the pharmacy's wholesale cost. To accomplish this result, Act 900 requires PBMs to timely update their MAC lists when drug wholesale prices increase, Ark. Code Ann. § 17–92–507(c)(2), and to provide pharmacies an administrative appeal procedure to challenge MAC reimbursement rates, § 17–92–507(c)(4)(A)(i)(*b*). Act 900 also permits Arkansas pharmacies to refuse to sell a drug if the reimbursement rate is lower than its acquisition cost. § 17–92–507(e). Respondent Pharmaceutical Care Management Association (PCMA), which represents the 11 largest PBMs in the country, sued, alleging, as relevant here, that Act 900 is pre-empted by the Employee Retirement Income Security Act of 1974 (ERISA). Following Circuit precedent in a case involving a similar Iowa statute, the District Court held that ERISA pre-empts Act 900. The Eighth Circuit affr med.

Held: Arkansas' Act 900 is not pre-empted by ERISA. Pp. 86–92.

(a) ERISA pre-empts state laws that "relate to" a covered employee beneft plan. 29 U. S. C. § 1144(a). "[A] state law relates to an ERISA plan if it has a connection with or reference to such a plan." *Egelhoff* v. *Egelhoff*, 532 U. S. 141, 147. Act 900 has neither of those impermissible relationships. Pp. 86–89.

(1) Act 900 does not have an impermissible connection with an ERISA plan. To determine whether such a connection exists, this Court asks whether the state law "governs a central matter of plan administration or interferes with nationally uniform plan administration." *Gobeille* v. *Liberty Mut. Ins. Co.*, 577 U. S. 312, 320. State rate regulations that merely increase costs or alter incentives for ERISA plans without forcing plans to adopt any particular scheme of substan-

tive coverage are not pre-empted by ERISA. See *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645, 668. Like the law at issue in *Travelers*, Act 900 is merely a form of cost regulation that does not dictate plan choices. Pp. 86–88.

(2) Act 900 also does not "refer to" ERISA. It does not "`ac[t] immediately and exclusively upon ERISA plans,'" and "`the existence of ERISA plans is [not] essential to the law's operation.'" *Gobeille*, 577 U. S., at 319–320. Act 900 affects plans only insofar as PBMs may pass along higher pharmacy rates to plans with which they contract, and Act 900 regulates PBMs whether or not the plans they service fall within ERISA's coverage. ERISA plans are therefore also not essential to Act 900's operation. Pp. 88–89.

(b) PCMA's contention that Act 900 has an impermissible connection with an ERISA plan because its enforcement mechanisms both directly affect central matters of plan administration and interfere with nationally uniform plan administration is unconvincing. First, its claim that Act 900 affects plan design by mandating a particular pricing methodology for pharmacy benefts is simply a long way of saying that Act 900 regulates reimbursement rates. Second, Act 900's appeal procedure does not govern central matters of plan administration simply because it requires administrators to comply with a particular process and may require a plan to reprocess how much it owes a PBM. Taken to its logical endpoint, PCMA's argument would pre-empt any suits under state law that could affect the price or provision of benefts, but this Court has held that ERISA does not pre-empt "state-law mechanisms of executing judgments against" ERISA plans, *Mackey* v. *Lanier Collection Agency & Service, Inc.*, 486 U. S. 825, 831. Third, allowing pharmacies to decline to dispense a prescription if the PBM's reimbursement will be less than the pharmacy's cost of acquisition does not interfere with central matters of plan administration. The responsibility for offering the pharmacy a below-acquisition reimbursement lies frst with the PBM. Finally, any "operational ineffciencies" caused by Act 900 are insuffcient to trigger ERISA pre-emption, even if they cause plans to limit benefts or charge plan members higher rates. See *De Buono* v. *NYSA–ILA Medical and Clinical Services Fund*, 520 U. S. 806, 816. Pp. 89–92.

891 F. 3d 1109, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which all other Members joined, except BARRETT, J., who took no part in the consideration or decision of the case. THOMAS, J., fled a concurring opinion, *post*, p. 92.

Nicholas J. Bronni, Solicitor General of Arkansas, argued the cause for petitioner. With him on the briefs were *Leslie Rutledge*, Attorney General, *pro se*, *Vincent M. Wagner*, Deputy Solicitor General, *Asher Steinberg* and *Dylan L. Jacobs*, Assistant Solicitors General, and *Shawn J. Johnson*, Senior Assistant Attorney General.

Frederick Liu argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Francisco*, *Deputy Solicitor General Kneedler*, *G. William Scott*, and *Wayne R. Berry*.

Seth P. Waxman argued the cause for respondent. With him on the brief were *Catherine M. A. Carroll*, *Paul R. Q. Wolfson*, *Michael B. Kimberly*, *Matthew A. Waring*, and *Sarah P. Hogarth*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of California et al. by *Xavier Becerra*, Attorney General of California, *Michael J. Mongan*, Solicitor General, *Matthew Rodriquez*, Chief Assistant Attorney General, *Joshua Patashnik*, Deputy Solicitor General, *Kathleen Boergers*, Supervising Deputy Attorney General, and *Karli Eisenberg*, Deputy Attorney General, and by the Attorneys General for their respective jurisdictions as follows: *Steve Marshall* of Alabama, *Kevin G. Clarkson* of Alaska, *Philip J. Weiser* of Colorado, *William Tong* of Connecticut, *Kathleen Jennings* of Delaware, *Karl A. Racine* of the District of Columbia, *Ashley Moody* of Florida, *Christopher M. Carr* of Georgia, *Clare E. Connors* of Hawaii, *Lawrence G. Wasden* of Idaho, *Kwame Raoul* of Illinois, *Curtis T. Hill, Jr.*, of Indiana, *Tom Miller* of Iowa, *Derek Schmidt* of Kansas, *Daniel Cameron* of Kentucky, *Jeff Landry* of Louisiana, *Aaron M. Frey* of Maine, *Brian E. Frosh* of Maryland, *Maura Healey* of Massachusetts, *Dana Nessel* of Michigan, *Keith Ellison* of Minnesota, *Lynn Fitch* of Mississippi, *Timothy C. Fox* of Montana, *Douglas J. Peterson* of Nebraska, *Aaron Ford* of Nevada, *Gordon MacDonald* of New Hampshire, *Gurbir S. Grewal* of New Jersey, *Letitia James* of New York, *Hector Balderas* of New Mexico, *Joshua H. Stein* of North Carolina, *Wayne Stenehjem* of North Dakota, *Dave Yost* of Ohio, *Mike Hunter* of Oklahoma, *Ellen F. Rosenblum* of Oregon, *Josh Shapiro* of Pennsylvania, *Peter F. Neronha* of Rhode Island, *Alan Wilson* of South Carolina, *Jason Ravnsborg* of South Dakota, *Ken Paxton* of Texas, *Sean D. Reyes* of Utah, *Thomas J. Donovan, Jr.*, of Vermont, *Mark R. Herring* of Virginia, *Robert W. Ferguson* of Washington, *Patrick Morrisey* of West Virginia, and *Joshua L. Kaul* of Wisconsin; for

JUSTICE SOTOMAYOR delivered the opinion of the Court.

Arkansas' Act 900 regulates the price at which pharmacy beneft managers reimburse pharmacies for the cost of drugs covered by prescription-drug plans. The question presented in this case is whether the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 829, as amended, 29 U. S. C. § 1001 *et seq.*, pre-empts Act 900. The Court holds that the Act has neither an impermissible connection with nor reference to ERISA and is therefore not pre-empted.

I

A

Pharmacy beneft managers (PBMs) are a little-known but important part of the process by which many Americans get their prescription drugs. Generally speaking, PBMs serve as intermediaries between prescription-drug plans and the

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AARP et al. by *Dara S. Smith, Barbara A. Jones,* and *William Alvarado Rivera*; for the AIDS Healthcare Foundation by *Laura Boudreau*; for the Alliance for Transparent and Affordable Prescriptions by *Daniel L. Geyser* and *J. Carl Cecere*; for the American Medical Association et al. by *Jack R. Bierig* and *Aphrodite Kokolis*; for the Arkansas Pharmacists Association et al. by *Howard R. Rubin* and *Robert T. Smith*; for the Community Oncology Alliance, Inc., et al. by *Jonathan E. Levitt* and *Todd Mizeski*; for FMI et al. by *William E. Copley* and *Saul Cohen*; for the National Association of Chain Drug Stores, Inc., by *Adam G. Unikowsky* and *Don L. Bell II*; for the National Association of Specialty Pharmacy by *Robert M. Palumbos, Jonathan L. Swichar,* and *Bradley A. Wasser*; and for the National Council of Insurance Legislators by *Nathaniel S. Shapo* and *Thomas P. Peabody.*

Briefs of *amici curiae* urging affr mance were f led for the Academy of Managed Care Pharmacy by *Tacy F. Flint*; for America's Health Insurance Plans, Inc., by *Anthony F. Shelley, Dawn E. Murphy-Johnson, Julie Simon Miller,* and *Thomas M. Palumbo*; for the Chamber of Commerce of the United States of America et al. by *Helgi C. Walker, Matthew S. Rozen,* and *Daryl L. Joseffer*; for Employers Health Purchasing Corp. by *Carter G. Phillips* and *Jennifer J. Clark*; for J. B. Hunt Transport Services, Inc., by *Brandon P. Long, Mark D. Spencer,* and *Richard D. Nix*; and for the Society of Human Resource Management by *Richard B. Lapp, Camille A. Olson,* and *Mark Casciari.*

pharmacies that benefciar ies use. When a benefciary of a prescription-drug plan goes to a pharmacy to f ll a prescription, the pharmacy checks with a PBM to determine that person's coverage and copayment information. After the benefciary leaves with his or her prescription, the PBM reimburses the pharmacy for the prescription, less the amount of the benefciary' s copayment. The prescription-drug plan, in turn, reimburses the PBM.

The amount a PBM "reimburses" a pharmacy for a drug is not necessarily tied to how much the pharmacy paid to purchase that drug from a wholesaler. Instead, PBMs' contracts with pharmacies typically set reimbursement rates according to a list specifying the maximum allowable cost (MAC) for each drug. PBMs normally develop and administer their own unique MAC lists. Likewise, the amount that prescription-drug plans reimburse PBMs is a matter of contract between a given plan and a PBM. A PBM's reimbursement from a plan often differs from and exceeds a PBM's reimbursement to a pharmacy. That difference generates a proft for PBMs.

In 2015, Arkansas adopted Act 900 in response to concerns that the reimbursement rates set by PBMs were often too low to cover pharmacies' costs, and that many pharmacies, particularly rural and independent ones, were at risk of losing money and closing. 2015 Ark. Acts no. 900. In effect, Act 900 requires PBMs to reimburse Arkansas pharmacies at a price equal to or higher than that which the pharmacy paid to buy the drug from a wholesaler.

Act 900 accomplishes this result through three key enforcement mechanisms. First, the Act requires PBMs to tether reimbursement rates to pharmacies' acquisition costs by timely updating their MAC lists when drug wholesale prices increase. Ark. Code Ann. § 17–92–507(c)(2) (Supp. 2019). Second, PBMs must provide administrative appeal procedures for pharmacies to challenge MAC reimbursement prices that are below the pharmacies' acquisition costs.

§ 17–92–507(c)(4)(A)(i)(*b*). If a pharmacy could not have acquired the drug at a lower price from its typical wholesaler, a PBM must increase its reimbursement rate to cover the pharmacy's acquisition cost. § 17–92–507(c)(4)(C)(i)(*b*). PBMs must also allow pharmacies to "reverse and rebill" each reimbursement claim affected by the pharmacy's inability to procure the drug from its typical wholesaler at a price equal to or less than the MAC reimbursement price. § 17–92–507(c)(4)(C)(iii). Third, and finally, the Act permits a pharmacy to decline to sell a drug to a benefciary if the relevant PBM will reimburse the pharmacy at less than its acquisition cost. § 17–92–507(e).

B

Respondent Pharmaceutical Care Management Association (PCMA) is a national trade association representing the 11 largest PBMs in the country. After the enactment of Act 900, PCMA filed suit in the Eastern District of Arkansas, alleging, as relevant here, that Act 900 is pre-empted by ERISA. See 29 U. S. C. § 1144(a) (ERISA pre-empts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan").

Before the District Court issued its opinion in response to the parties' cross-motions for summary judgment, the Court of Appeals for the Eighth Circuit decided, in a different case, that ERISA pre-empts a similar Iowa statute. *Pharmaceutical Care Mgmt. Assn.* v. *Gerhart*, 852 F. 3d 722 (2017). The Eighth Circuit concluded that the Iowa statute was pre-empted for two reasons. First, it made "implicit reference" to ERISA by regulating PBMs that administer benefts for ERISA plans. *Id.*, at 729. Second, it was impermissibly "connected with" an ERISA plan because, by requiring an appeal process for pharmacies to challenge PBM reimbursement rates and restricting the sources from which PBMs could determine pricing, the law limited a plan administrator's ability to control the calculation of drug benefts. *Id.*,

at 726, 731. Concluding that Arkansas' Act 900 contains similar features, the District Court held that ERISA likewise pre-empts Act 900. 240 F. Supp. 3d 951, 958 (ED Ark. 2017). The Eighth Circuit affirmed. 891 F. 3d 1109, 1113 (2018). This Court granted certiorari. 589 U. S. 1127 (2020).

II

ERISA pre-empts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA. 29 U. S. C. § 1144(a). "[A] state law relates to an ERISA plan if it has a connection with or reference to such a plan." *Egelhoff* v. *Egelhoff*, 532 U. S. 141, 147 (2001) (internal quotation marks omitted). Because Act 900 has neither of those impermissible relationships with an ERISA plan, ERISA does not pre-empt it.

A

To determine whether a state law has an "impermissible connection" with an ERISA plan, this Court considers ERISA's objectives "as a guide to the scope of the state law that Congress understood would survive." *California Div. of Labor Standards Enforcement* v. *Dillingham Constr., N. A., Inc.*, 519 U. S. 316, 325 (1997) (internal quotation marks omitted). ERISA was enacted "to make the benefits promised by an employer more secure by mandating certain oversight systems and other standard procedures." *Gobeille* v. *Liberty Mut. Ins. Co.*, 577 U. S. 312, 320–321 (2016). In pursuit of that goal, Congress sought "to ensure that plans and plan sponsors would be subject to a uniform body of benefits law," thereby "minimiz[ing] the administrative and financial burden of complying with conflicting directives" and ensuring that plans do not have to tailor substantive benefits to the particularities of multiple jurisdictions. *Ingersoll-Rand Co.* v. *McClendon*, 498 U. S. 133, 142 (1990).

ERISA is therefore primarily concerned with preempting laws that require providers to structure benefit plans in par-

ticular ways, such as by requiring payment of specifc benefts, *Shaw* v. *Delta Air Lines, Inc.*, 463 U. S. 85 (1983), or by binding plan administrators to specifc rules for determining benefciary status, *Egelhoff*, 532 U. S. 141. A state law may also be subject to pre-emption if "acute, albeit indirect, economic effects of the state law force an ERISA plan to adopt a certain scheme of substantive coverage." *Gobeille*, 577 U. S., at 320 (internal quotation marks omitted). As a shorthand for these considerations, this Court asks whether a state law "governs a central matter of plan administration or interferes with nationally uniform plan administration." *Ibid.* (internal quotation marks and ellipsis omitted). If it does, it is pre-empted.

Crucially, not every state law that affects an ERISA plan or causes some disuniformity in plan administration has an impermissible connection with an ERISA plan. That is especially so if a law merely affects costs. In *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645 (1995), this Court addressed a New York law that imposed surcharges of up to 13% on hospital billing rates for patients covered by insurers other than Blue Cross/Blue Shield (Blues). Plans that bought insurance from the Blues therefore paid less for New York hospital services than plans that did not. This Court presumed that the surcharges would be passed on to insurance buyers, including ERISA plans, which in turn would incentivize ERISA plans to choose the Blues over other alternatives in New York. *Id.*, at 659. Nevertheless, the Court held that such an "indirect economic infuence" did not create an impermissible connection between the New York law and ERISA plans because it did not "bind plan administrators to any particular choice." *Ibid.* The law might "affect a plan's shopping decisions, but it [did] not affect the fact that any plan will shop for the best deal it can get." *Id.*, at 660. If a plan wished, it could still provide a uniform interstate beneft package. *Ibid.*

In short, ERISA does not pre-empt state rate regulations that merely increase costs or alter incentives for ERISA plans without forcing plans to adopt any particular scheme of substantive coverage. *Id.*, at 668; cf. *De Buono* v. *NYSA–ILA Medical and Clinical Services Fund*, 520 U. S. 806, 816 (1997) (concluding that ERISA did not pre-empt a state tax on gross receipts for patient services that simply increased the cost of providing benefits); *Dillingham*, 519 U. S., at 332 (holding that ERISA did not pre-empt a California statute that incentivized, but did not require, plans to follow certain standards for apprenticeship programs).

The logic of *Travelers* decides this case. Like the New York surcharge law in *Travelers*, Act 900 is merely a form of cost regulation. It requires PBMs to reimburse pharmacies for prescription drugs at a rate equal to or higher than the pharmacy's acquisition cost. PBMs may well pass those increased costs on to plans, meaning that ERISA plans may pay more for prescription-drug benefts in Arkansas than in, say, Arizona. But "cost uniformity was almost certainly not an object of pre-emption." *Travelers*, 514 U. S., at 662. Nor is the effect of Act 900 so acute that it will effectively dictate plan choices. See *id.*, at 668. Indeed, Act 900 is less intrusive than the law at issue in *Travelers*, which created a compelling incentive for plans to buy insurance from the Blues instead of other insurers. Act 900, by contrast, applies equally to all PBMs and pharmacies in Arkansas. As a result, Act 900 does not have an impermissible connection with an ERISA plan.

B

Act 900 also does not "refer to" ERISA. A law refers to ERISA if it "`acts immediately and exclusively upon ERISA plans or where the existence of ERISA plans is essential to the law's operation.'" *Gobeille*, 577 U. S., at 319–320 (quoting *Dillingham*, 519 U. S., at 325; ellipsis omitted).

Act 900 does not act immediately and exclusively upon ERISA plans because it applies to PBMs whether or not they manage an ERISA plan. Indeed, the Act does not di-

rectly regulate health benefit plans at all, ERISA or otherwise. It affects plans only insofar as PBMs may pass along higher pharmacy rates to plans with which they contract.

ERISA plans are likewise not essential to Act 900's operation. Act 900 defines a PBM as any "entity that administers or manages a pharmacy benefits plan or program," and it defines a "pharmacy benefits plan or program," in turn, as any "plan or program that pays for, reimburses, covers the cost of, or otherwise provides for pharmacist services to individuals who reside in or are employed in [Arkansas]." Ark. Code Ann. §§17–92–507(a)(7), (9). Under those provisions, Act 900 regulates PBMs whether or not the plans they service fall within ERISA's coverage.[1] Act 900 is therefore analogous to the law in *Travelers*, which did not refer to ERISA plans because it imposed surcharges "regardless of whether the commercial coverage [was] ultimately secured by an ERISA plan, private purchase, or otherwise." 514 U. S., at 656; see also *Dillingham*, 519 U. S., at 328 (concluding that the relevant California law did not refer to ERISA plans because the apprenticeship programs it regulated did not need to be ERISA programs).

III

PCMA disagrees that Act 900 amounts to nothing more than cost regulation. It contends that Act 900 has an impermissible connection with an ERISA plan because its enforcement mechanisms both directly affect central matters of plan administration and interfere with nationally uniform plan administration. The mechanisms that PCMA identifies, however, do not require plan administrators to structure their benefit plans in any particular manner, nor do they lead to anything more than potential operational ineffciencies.[2]

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[1] PBMs contract with a variety of healthcare plans and programs that are not covered by ERISA, including Medicaid, Medicare, military, and market place plans.

[2] PCMA does not suggest that Act 900's enforcement mechanisms overlap with "fundamental components of ERISA's regulation of plan administration." *Gobeille* v. *Liberty Mut. Ins. Co.*, 577 U. S. 312, 323 (2016).

PCMA frst claims that Act 900 affects plan design by mandating a particular pricing methodology for pharmacy benefts. As PCMA reasons, while a plan might prefer that PBMs reimburse pharmacies using a MAC list constructed with an eye toward containing costs and ensuring predictability, Act 900 ignores that preference and instead requires PBMs to reimburse pharmacies based on acquisition costs. But that argument is just a long way of saying that Act 900 regulates reimbursement rates. Requiring PBMs to reimburse pharmacies at or above their acquisition costs does not require plans to provide any particular beneft to any particular benefciary in any particular way. It simply establishes a foor for the cost of the benefts that plans choose to provide. The plans in *Travelers* might likewise have preferred that their insurers reimburse hospital services without paying an additional surcharge, but that did not transform New York's cost regulation into central plan administration.[3]

Act 900's appeal procedure likewise does not govern central matters of plan administration. True, plan administrators must "comply with a particular process, subject to state-specifc deadlines, and [Act 900] dictates the substantive standard governing the resolution of [an] appeal." Brief for Respondent 24. Moreover, if a pharmacy wins its appeal, a plan, depending on the terms of its contract with a PBM, may need to recalculate and reprocess how much it (and its benefciary) owes. But any contract dispute implicating the cost of a medical beneft would involve similar demands and could lead to similar results. Taken to its logical endpoint, PCMA's argument would pre-empt any suits under state law that could affect the price or provision of benefts. Yet this Court has held that ERISA does not pre-empt "state-law mechanisms of executing judgments against ERISA welfare

[3] PCMA also points to Act 900's requirement that PBMs update their MAC lists to refec t statutorily mandated prices. But that obligation does not affect plan design for the same reasons. Moreover, if PBMs were not required to update their MAC lists, they would be in constant noncompliance with Act 900's cost regulation.

beneft plans, even when those mechanisms prevent plan participants from receiving their benefts." *Mackey* v. *Lanier Collection Agency & Service, Inc.*, 486 U. S. 825, 831–832 (1988).

PCMA also argues that Act 900 interferes with central matters of plan administration by allowing pharmacies to decline to dispense a prescription if the PBM's reimbursement will be less than the pharmacy's cost of acquisition. PCMA contends that such a refusal effectively denies plan benefci - aries their benefts, but that argument misunderstands the statutory scheme. Act 900 requires PBMs to compensate pharmacies at or above their acquisition costs. When a pharmacy declines to dispense a prescription, the responsibility lies frst with the PBM for offering the pharmacy a below-acquisition reimbursement.

Finally, PCMA argues that Act 900's enforcement mechanisms interfere with nationally uniform plan administration by creating "operational ineffciencies." Brief for Respondent 34. But creating ineffciencies alone is not enough to trigger ERISA pre-emption. See, *e. g.*, *Mackey*, 486 U. S., at 831 (holding that ERISA did not pre-empt a state garnishment procedure despite petitioners' contention that such actions would impose "substantial administrative burdens and costs" on plans). PCMA argues that those operational ineffciencies will lead to increased costs and, potentially, decreased benefts. ERISA does not pre-empt a state law that merely increases costs, however, even if plans decide to limit benefts or charge plan members higher rates as a result. See *De Buono*, 520 U. S., at 816 ("Any state tax, or other law, that increases the cost of providing benefts to covered employees will have some effect on the administration of ERISA plans, but that simply cannot mean that every state law with such an effect is pre-empted by the federal statute").

* * *

In sum, Act 900 amounts to cost regulation that does not bear an impermissible connection with or reference to

ERISA. The judgment of the Eighth Circuit is therefore reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE BARRETT took no part in the consideration or decision of this case.

JUSTICE THOMAS, concurring.

I join the Court's opinion in full because it properly applies our precedents interpreting the pre-emptive effect of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U. S. C. § 1144.

I write separately because I continue to doubt our ERISA pre-emption jurisprudence. *Gobeille* v. *Liberty Mut. Ins. Co.*, 577 U. S. 312, 327 (2016) (THOMAS, J., concurring). The plain text of ERISA suggests a two-part pre-emption test: (1) do any ERISA provisions govern the same matter as the state law at issue, and (2) does that state law have a meaningful relationship to ERISA plans? Only if the answers to both are in the affr mative does ERISA displace state law. But our precedents have veered from the text, transforming § 1144 into a "vague and `potentially boundless'. . . `purposes and objectives' pre-emption" clause that relies on "generalized notions of congressional purposes." *Wyeth* v. *Levine*, 555 U. S. 555, 587 (2009) (THOMAS, J., concurring in judgment). Although that approach may allow courts to arrive at the correct result in individual cases, it offers little guidance or predictability. We should instead apply the law as written.

I

When construing a statutory provision, we begin with the text. *United States* v. *Alvarez-Sanchez*, 511 U. S. 350, 356 (1994). Section 1144(a) provides that certain of ERISA's provisions "shall supersede any and all State laws insofar as

they may now or hereafter relate to any employee benefit plan" with certain exceptions not relevant in this case.

The term "supersede" precludes reading the statute as categorically pre-empting any state law related to employee benefit plans. Rather, it suggests a replacement or substitution instead of a blanket pre-emption. See Webster's Third New International Dictionary 2295 (1976) (defining "supersede" to mean, among other things, "to take the place of and outmode by superiority"); *District of Columbia* v. *Greater Washington Bd. of Trade*, 506 U. S. 125, 135–136 (1992) (Stevens, J., dissenting) (noting the word "supersede" is "often overlooked").

Where Congress seeks to pre-empt state laws *without* replacing them, it typically uses different words. See, *e. g.*, 84 Stat. 88, codifed in 15 U. S. C. § 1334(b) (stating in a "preemption" section that "[n]o requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this Act"); 49 U. S. C. § 41713(b)(1) ("[A] State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier"). Congress knows how to write sweeping pre-emption statutes. But it did not do so here. Applying the statutory text, the frst step is to ask whether a provision in ERISA governs the same matter as the disputed state law, and thus could replace it.

The next step is to determine whether the state law "relate[s] to" employee benefit plans. 29 U. S. C. § 1144(a). The Court has expressed concern that a *literal* reading of this phrase is so broad that it is meaningless. See *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645, 655 (1995). But many times it is the ordinary, not literalist, meaning that is the better one. See, *e. g.*, *McBoyle* v. *United States*, 283 U. S. 25, 26 (1931)

("vehicle" in the 1930s did not include aircraft because "in everyday speech `vehicle' calls up the picture of a thing moving on land"). "[A] reasonable person conversant with applicable social conventions" would not understand "relate to" as covering any state law with a connection to employee beneft plans, no matter how remote the connection. Manning, What Divides Textualists From Purposivists? 106 Colum. L. Rev. 70, 77 (2006); see also *California Div. of Labor Standards Enforcement* v. *Dillingham Constr., N. A., Inc.*, 519 U. S. 316, 336 (1997) (Scalia J., concurring) (interpreting "relate to" literally would lead to results "no sensible person could have intended"). If someone, for instance, asserted that he is "related to Joe," it would be reasonable to presume a close familial relationship. No one would assume that the speaker was referencing a mutual tie to Adam and Eve. So too here. A state law needs more than a "tenuous, remote, or peripheral" connection with ERISA plans to trigger the statute. *Shaw* v. *Delta Air Lines, Inc.*, 463 U. S. 85, 100, n. 21 (1983); cf. *Wisconsin Dept. of Revenue* v. *William Wrigley, Jr., Co.*, 505 U. S. 214, 231 (1992) ("`the law cares not for trifes' ").

II

Here, the parties have not pointed to any ERISA provision that governs the same matter as Act 900. That alone should resolve the case. But the parties certainly cannot be faulted for not raising this argument. Our amorphous precedents have largely ignored this step. *E. g., District of Columbia*, 506 U. S., at 129.

Instead, we have asked only if the state law "`relate[d] to' " ERISA plans. *Ibid.* But this has proved problematic because of "how much state law § 1144 would pre-empt if read literally." *Gobeille*, 577 U. S., at 328 (THOMAS, J., concurring). Instead of reverting to the text, however, we decided that "relate to" is so "indetermina[te]" that it cannot "give us much help drawing the line." *Travelers*, 514 U. S., at 655.

Having paid little attention to the actual statutory test, we crafted our own, asking whether the challenged state law frustrates the "`objectives'" of ERISA. *Gobeille*, 577 U. S., at 320. Under this approach, the Court will declare as pre-empted "state laws based on perceived conf icts with broad federal policy objectives, legislative history, or generalized notions of congressional purposes that are not embodied within the text of federal law." *Wyeth*, 555 U. S., at 583 (opinion of THOMAS, J.). Our case law states that under an objectives and purposes pre-emption approach, a state law is pre-empted if it has a "reference to" or an "impermissible connection with" ERISA plans. *Gobeille*, 577 U. S., at 319–320. But this vague test offered "no more help than" the "`relate to'" one. *Travelers*, 514 U. S., at 656.

Our more recent efforts to further narrow the test have just yielded more confusion. A state law references ERISA only if it "`acts immediately and exclusively upon ERISA plans. . . or where the existence of ERISA plans is essential to the law's operation.'" *Gobeille*, 577 U. S., at 319–320 (ellipsis in original). A connection with ERISA plans is impermissible only if it "`governs. . . a central matter of plan administration'" or "`interferes with nationally uniform plan administration.'" *Id.*, at 320. (ellipsis in original).[1] Although, at frst blush, that may seem more precise than asking if a law "relates to" ERISA, it has proven just as diffcu lt to apply consistently, leading many members of the Court to suggest still other methods. See, *e. g.*, *Egelhoff* v. *Egelhoff*, 532 U. S. 141, 152 (2001) (Scalia, J., concurring); *Aetna Health Inc.* v. *Davila*, 542 U. S. 200, 222–224 (2004) (Ginsburg, J., concurring). Instead of relying on this "accordion-like" test

[1] We have also held that a state law might have an impermissible connection with ERISA plans if the indirect economic effects of the state law "force an ERISA plan to adopt a certain scheme of substantive coverage or effectively restrict its choice of insurers." *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645, 668 (1995).

that seems to expand or contract depending on the year, Reece, The Accordion Type Jurisprudence of ERISA Preemption Creates Unnecessary Uncertainty, 88 UMKC L. Rev. 115, 124, n. 71 (2019), perhaps we should just interpret the text as written.

III

Stare decisis concerns need not caution against a return to the text because the outcomes of our recent cases—if not the reasoning—are generally consistent with a text-based approach. Indeed, since *Travelers* every state law this Court has held pre-empted involved a matter explicitly addressed by ERISA provisions. See, *e. g.*, *Boggs* v. *Boggs*, 520 U. S. 833, 843–854 (1997) (pre-empting state law and discussing ERISA provisions with which it conf icts); *Aetna Health*, 542 U. S., at 204 (holding that states cannot create new causes of action that conf ict with ERISA's "`interlocking, interrelated, and interdependent remedial scheme,'" located in § 502(a) of ERISA).[2]

But it is not enough for this Court to reach the right conclusions. We should do so in the way Congress instructed. Indeed, although we have generally arrived at the conclusions we would arrive at under a text-based approach, our capacious, nontextual test encourages departure from the text. The decision below is testament to that problem. We

[2] The Court has found something to be "a central matter of plan administration" only when the matter is addressed by ERISA's text. *E. g.*, *Egelhoff* v. *Egelhoff*, 532 U. S. 141, 148 (2001); *Gobeille* v. *Liberty Mut. Ins. Co.*, 577 U. S., at 321–322. And if the state law interferes with national uniformity but ERISA does not address the matter, we have held that the matter in question does not require uniformity. *Travelers*, 514 U. S., at 662; *ante*, at 5, ("not every state law that . . . causes some disuniformity in plan administration" is pre-empted). We have also held that ERISA does not pre-empt state laws regulating ERISA plans engaging in activity not regulated by ERISA, like running a hospital. See *De Buono* v. *NYSA–ILA Medical and Clinical Services Fund*, 520 U. S. 806 (1997). That makes sense because ERISA has nothing to say about those activities.

unanimously reverse that decision today, but we can hardly fault judges when they apply the amorphous test that we gave them. We can and should do better.

Syllabus

TEXAS *v.* NEW MEXICO

ON MOTION FOR REVIEW OF THE RIVER MASTER'S FINAL DETERMINATION

No. 65, Orig. Argued October 5, 2020—Decided December 14, 2020

The 1949 interstate Pecos River Compact provides for equitable apportionment of the use of the Pecos River's water by New Mexico and Texas. In a 1988 amended decree in this case, the Court appointed a River Master to annually calculate New Mexico's obligations to Texas under the Compact. See *Texas* v. *New Mexico*, 485 U. S. 388. The Court also adopted the River Master's Manual, which elaborates on how to make the necessary calculations to determine whether New Mexico is complying with its obligations under the Compact. As relevant, § C.5 of the Manual provides that when water is stored "at the request of Texas" in a facility in New Mexico, then New Mexico's delivery obligation "will be reduced by the amount of reservoir losses attributable to its storage."

In 2014, a tropical storm caused heavy rainfall in the Pecos River Basin. To prevent flooding, Texas's Pecos River Commissioner requested that some of the River's water be stored in New Mexico. New Mexico's Commissioner agreed. Several months later, the water was released. But critically for purposes of this dispute, a significant amount of water evaporated while the water was held in New Mexico.

For years thereafter, the States sought to reach an agreement on how the evaporated water should be accounted for under the Compact. To permit those negotiations to continue, the River Master outlined a procedure in 2015 that called for the future resolution of the issue. Neither State objected. When negotiations eventually broke down, however, New Mexico filed a motion with the River Master that sought delivery credit for the evaporated water. As relevant here, the River Master ruled in New Mexico's favor, rejecting Texas's argument that the motion was untimely and concluding that the evaporated water was water stored "at the request of Texas" under § C.5 of the River Master's Manual.

Held:

1. New Mexico's motion for credit for the evaporated water was not untimely. Both parties agreed to postpone the River Master's resolution of the evaporated-water issue. Neither party may now object to the negotiation procedure outlined by the River Master for resolving the dispute. P. 105.

2. New Mexico is entitled to delivery credit for the evaporated water. Section C.5 of the River Master's Manual resolves this case. Texas requested that New Mexico store water at a facility in New Mexico, and New Mexico did so, with the understanding that the water belonged to Texas. Texas's counterarguments—that the stored water was not actually part of the "Texas allocation" referred to in § C.5, that New Mexico did not "store" the water for § C.5 purposes, and that Texas should not be charged for any evaporation occurring from March 15 until the water was released in August 2015—are unpersuasive. Pp. 106–108.

Motion denied.

KAVANAUGH, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, BREYER, SOTOMAYOR, KAGAN, and GORSUCH, JJ., joined. ALITO, J., filed an opinion concurring in the judgment in part and dissenting in part, *post*, p. 108. BARRETT, J., took no part in the consideration or decision of the case.

Kyle D. Hawkins, Solicitor General of Texas, argued the cause for plaintiff. With him on the briefs were *Ken Paxton*, Attorney General of Texas, *Jeffrey C. Mateer*, First Assistant Attorney General, *Bill Davis*, Deputy Solicitor General, *Heather Gebelin Hacker*, Assistant Solicitor General, and *Abigail M. Frisch*, Assistant Attorney General.

Jeffrey J. Wechsler, Special Assistant Attorney General of New Mexico, argued the cause for defendant. With him on the brief were *Hector H. Balderas*, Attorney General of New Mexico, *Tania Maestas*, Deputy Attorney General, and *Matthew A. Zidovsky*, *Dominique M. Work*, and *A. Nathaniel Chakeres*, Special Assistant Attorneys General.

Masha G. Hansford argued the cause for the United States as *amicus curiae* in support of defendant. On the brief were *Solicitor General Francisco*, *Deputy Solicitor General Kneedler*, *Frederick Liu*, and *Christopher B. Rich*.

JUSTICE KAVANAUGH delivered the opinion of the Court.

This is a case about evaporated water. In the southwestern United States, the Pecos River begins near Santa Fe, New Mexico, and winds its way south for hundreds of miles through New Mexico and Texas before flowing into the Rio Grande River on the Texas-Mexico border. The 1949 inter-

state Pecos River Compact provides for equitable apportionment of the use of the River's water by New Mexico and Texas.

The dispute in this case started in 2014 when a tropical storm hit the Pecos River Basin. To prevent foodi ng, Texas asked New Mexico to temporarily store water from the Pecos River that would otherwise fow into Texas. New Mexico agreed to do so. A few months later, New Mexico released the water to Texas. But in the interim, some of the water evaporated.

The question presented is straightforward: Under the Pecos River Compact, does New Mexico receive delivery credit for the evaporated water even though that water was not delivered to Texas? The answer is yes. The River Master's Manual, which was approved by this Court in 1988, implements the Compact and speaks directly to this question: When water is stored in New Mexico "at the request of Texas," then New Mexico's delivery obligation "will be reduced by the amount of reservoir losses attributable to its storage." App. to Texas's Motion for Review 37a. Here, the water was stored in New Mexico at the request of Texas, so New Mexico's delivery obligation must be reduced by the amount of water that evaporated during its storage.

For that reason, the River Master awarded New Mexico delivery credit for the evaporated water. We agree with the River Master's determination, and we deny Texas's motion for review.

I

A

The Pecos River originates in the Sangre de Cristo Mountains east of Santa Fe, New Mexico. The River fows south into Texas, winding its way for hundreds of miles past the oil felds, farms, ranches, and high school football stadiums of west Texas. About 900 miles later, the Pecos pours into the Rio Grande River a few miles west of the city of Del Rio on the Texas-Mexico border.

Because of the dry landscape, farmers and ranchers in New Mexico and west Texas have long depended on Pecos River water. Over time, Texas recognized that its water supply was vulnerable because upriver New Mexico could (if it wanted) restrict Texas's access to the water from the Pecos River. Eventually, the two States struck a deal. In 1949, the States ratifed and Congress approved the Pecos River Compact to, among other things, "provide for the equitable division and apportionment of the use of the waters of the Pecos River" and "remove causes of present and future controversies." Art. I, 63 Stat. 160.

Because of the irregular fow of the Pecos River, the Compact does not enumerate a specifc amount of water that New Mexico must deliver to Texas each year. Rather, Article III(a) of the Compact provides that "New Mexico shall not deplete by man's activities the fow of the Pecos River at the New Mexico-Texas state line below an amount which will give to Texas a quantity of water equivalent to that available to Texas under the 1947 condition." *Id.*, at 161.

Article VI(c) of the Compact in turn prescribes a methodology to implement Article III(a) and determine whether New Mexico has met its annual delivery obligation: "the infow-outfow method." *Id.*, at 163. Roughly speaking, the infow-outfow method looks at how much water is in the River in New Mexico, which in turn helps determine how much water New Mexico must allow to fow into Texas.

In 1987, after a number of early disputes, this Court determined that New Mexico was not allowing suffcient water to fow into Texas and was therefore breaching its Article III(a) obligations. *Texas* v. *New Mexico*, 482 U. S. 124, 127–128. The Court issued a decree setting forth the States' rights and duties. *Id.*, at 135. In addition, in light of the States' "natural propensity" to disagree, the Court decided to appoint a disinterested River Master "to make the calculations provided for in this decree, annually and as promptly as possible as data are available." *Id.*, at 134.

In 1988, the Court appointed Neil S. Grigg as River Master, and he continues to serve in that position. *Texas* v. *New Mexico*, 485 U. S. 388, 394 (*per curiam*). The Court also issued an amended decree. The amended decree requires the River Master to annually calculate: (i) New Mexico's delivery obligation; (ii) any shortfall or overage based on what New Mexico actually delivered; and (iii) the net shortfall, if any, after subtracting any overages accumulated in previous years. *Id.*, at 391.

In making those calculations, the River Master must abide by the River Master's Manual, which the Court described as "an integral part of this Decree." *Id.*, at 389; see also *id.*, at 391. New Mexico ordinarily receives credit only for water that actually makes its way to Texas. But there are exceptions. Sometimes, as in this case, water may be stored in New Mexico at Texas's request. Section C.5 of the River Master's Manual addresses that situation. It is titled "Texas Water Stored in New Mexico Reservoirs." App. to Texas's Motion for Review 37a. As relevant here, § C.5 provides:

> "If a quantity of the Texas allocation is *stored* in facilities constructed in New Mexico *at the request of Texas, then . . . this quantity will be reduced by the amount of reservoir losses attributable to its storage*, and, when released for delivery to Texas, the quantity released less channel losses is to be delivered by New Mexico at the New Mexico-Texas state line." *Ibid.* (emphasis added).

Procedurally, the decree (i) directs the River Master to deliver an annual preliminary report to the States by May 15; (ii) requires the States to submit any objections prior to June 15; (iii) specifes that the River Master deliver a f nal report by July 1; and (iv) mandates that a State f le any request for review of the f nal report in this Court within 30 days of the f nal report. *Texas*, 485 U. S., at 391, 393. Each State appoints a single Pecos River Commissioner to represent the State's interests.

B

In the fall of 2014, Tropical Storm Odile caused heavy rainfall in the Pecos River Basin. The rain quickly f lled a Texas reservoir known as Red Bluff Reservoir. Red Bluff lies just south of the New Mexico-Texas border along the Pecos River, about 50 miles west of Kermit, Texas.

In November 2014, to prevent foodi ng, Texas's Pecos River Commissioner wrote to his counterpart Commissioner in New Mexico: "[I]t is my request that New Mexico store Texas' portion of the fows until such time as they can be utilized in Red Bluff Reservoir." App. to Texas's Motion for Review 61a. In response, New Mexico's Commissioner agreed that water would be stored at the Brantley Reservoir in New Mexico, a reservoir owned by the United States. But he also explained that the water "belongs to Texas" and that "[b]ut for Texas' request, New Mexico would have released" the water "to the Texas state line." *Id.*, at 63a. The New Mexico Commissioner added that "[e]vaporative losses . . . should thus be borne by Texas." *Ibid.*

Beginning in August 2015, the water was f nally released to Texas. But there was a problem: During the time that the water was stored in New Mexico, a signifcant amount of water (approximately 21,000 acre-feet) evaporated.

During the early months of 2015, Texas and New Mexico discussed how to account for that evaporated water under the Compact. But they did not reach an agreement. In May 2015, the River Master issued his preliminary report for 2014. The preliminary report did not account for the evaporated water, but instead explained that the States would be "evaluating the issue and sending a recommendation about how to proceed." App. to State of New Mexico's Response 38.

The States still had not agreed on a course of action as of the July 1, 2015, deadline for the River Master's f nal report. Because the States had not submitted a joint proposal, the f nal report reiterated that the dispute over the water would be resolved later. In a section titled "Pending Issues," the

report explained that the "States can reach agreement" or, if not, either "State can initiate a motion to be considered by the River Master." *Id.*, at 61.

Importantly, neither State objected to the preliminary or final reports for 2014. In other words, neither State opposed the ongoing procedure outlined by the River Master for resolving this dispute. In the months and years that followed, the States continued to toil away on a joint proposal for the River Master. But the negotiations between the States eventually broke down, and in 2018, New Mexico filed a motion with the River Master seeking delivery credit for the evaporated water.

In September 2018, as relevant here, the River Master ruled in favor of New Mexico. First, he rejected Texas's argument that New Mexico had waited too long to file its motion for credit for the evaporated water. He stated that "discussions about the food and accounting for it equitably were continuous from the time the food occurred until the present"; that the States "knew from the time of the food that such an adjustment would be required"; and that the States had not previously expressed any urgency about resolving the matter. App. to Texas's Motion for Review 269a–270a.

Second, on the merits, the River Master concluded that the evaporated water was "Texas Water Stored in New Mexico Reservoirs" under § C.5 of the River Master's Manual. Applying that provision of the Manual, the River Master decided that New Mexico was entitled to delivery credit for the evaporated water.[1]

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[1] We note four aspects of the River Master's decision that are not at issue here. First, the River Master determined that these stored waters were not "unappropriated food waters" for purposes of the Compact. Art. III(f), 63 Stat. 161. Neither State challenges that determination. Second, the River Master ruled that the States should be equally charged for evaporation that occurred before March 1, 2015, because public safety concerns in both States counseled against releasing the water before that date. That aspect of the River Master's decision is likewise not at issue in this Court. Third, in ruling for New Mexico, the River Master did not

In the wake of the River Master's decision, Texas invoked this Court's original jurisdiction and filed a motion for review of the River Master's determination.

II

Texas first argues that New Mexico's 2018 motion to the River Master for credit for the evaporated water was untimely. According to Texas, New Mexico filed the motion after expiration of the amended decree's 30-day deadline for a State to file objections to the relevant preliminary report—a deadline that in this case would have expired several years ago. See *Texas*, 485 U. S., at 391.

Texas's argument disregards the history of the proceedings in this case. Both States agreed to postpone the River Master's resolution of the evaporated-water issue while they negotiated and sought an agreement. The River Master's annual reports in turn repeatedly explained that the States were trying to negotiate a solution to the issue. Neither State objected to the negotiation procedure. Texas cannot now run away from the procedure that it agreed to.

Texas responds that the amended decree's deadlines for objections are jurisdictional, meaning that the River Master and the States could not postpone the deadlines for objecting to the reports. But those time limits are plainly not jurisdictional. Among other things, the time limits do not "`speak in jurisdictional terms or refer in any way to the jurisdiction'" of this Court. *Henderson* v. *Shinseki*, 562 U. S. 428, 438 (2011) (quoting *Zipes* v. *Trans World Airlines, Inc.*, 455 U. S. 385, 394 (1982)).

We proceed to the merits.

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rely on Article XII of the Compact, which applies to "consumptive use of water by the United States." *Id.*, at 165. Although Texas asks us to overturn the River Master's determination, Texas agrees that Article XII does not apply here. We therefore need not address that provision. Fourth, the River Master amended the Manual. That amendment does not affect our resolution of this case, so we need not address it.

III

On the merits, Texas contends that it should receive credit for the water that evaporated while New Mexico was storing the water. New Mexico and the United States argue that Texas is not entitled to credit because the water was stored in New Mexico at Texas's request. We agree with New Mexico and the United States.

Recall that Article VI(c) of the Compact provides that "the infow-outfow method . . . shall be used" to calculate New Mexico's Article III(a) delivery obligation. 63 Stat. 163. To implement the Compact, as we have explained, this Court's 1988 amended decree adopted the River Master's Manual, which elaborates on how to make the proper calculations. See *Texas*, 485 U. S., at 389 (describing the Manual as "an integral part of this Decree"). In particular, since 1988, the Manual has included § C.5, which states:

> "If a quantity of the Texas allocation is *stored* in facilities constructed in New Mexico *at the request of Texas, then . . . this quantity will be reduced by the amount of reservoir losses attributable to its storage*, and, when released for delivery to Texas, the quantity released less channel losses is to be delivered by New Mexico at the New Mexico-Texas state line." App. to Texas's Motion for Review 37a (emphasis added).

We agree with the River Master that the text of § C.5 of the Manual easily resolves this case. Texas's Pecos River Commissioner asked that the water be stored at a facility in New Mexico when, in November 2014, he sent New Mexico's Commissioner an e-mail with the plainspoken subject line "Texas request for storage." *Id.*, at 61a. In that e-mail, Texas requested that New Mexico hold Texas's "portion of the fows until such time as they can be utilized in Red Bluff Reservoir." *Ibid.* New Mexico did so. But New Mexico was careful to remind Texas that the water "belongs to Texas," and that, "[b]ut for Texas' request, New Mexico

would have released" the water "to the Texas state line." *Id.*, at 63a. New Mexico also added (correctly, as it turns out) that "[e]vaporative losses . . . should thus be borne by Texas." *Ibid.*

The text of § C.5 and the record evidence of the States' correspondence establish that New Mexico is entitled to delivery credit for the water that evaporated while New Mexico was storing the water at Texas's request.

In response, Texas offers various arguments, but none is persuasive.

First, Texas suggests that the stored water was not actually part of the "Texas allocation" referred to in § C.5 of the Manual. But under that provision, Texas's "allocation" is the amount of water that Texas would have received if the water had not been stored in New Mexico. See Compact, Art. III(a), 63 Stat. 161 (entitling Texas to the "quantity of water equivalent to that available to Texas under the 1947 condition"); Art. VI(c), *id.*, at 163 (requiring the use of the "infow-outfow method"). Here, Texas requested that New Mexico store water that otherwise would have fowed across the state line and counted toward Texas's allocation. The stored water was therefore part of Texas's allocation under § C.5.

Second, Texas asserts that New Mexico did not "store" the water for purposes of § C.5. Texas suggests that the term "stored" in that provision means holding the water long-term for benefcia l use. But § C.5 of the Manual does not purport to def ne "stored" in any way other than its ordinary meaning of holding water for Texas. Consistent with that ordinary meaning, the States regularly used variations of the term "store" to describe the storage of the water in this case. Indeed, Texas's initial request to New Mexico came in an e-mail with the hard-to-misunderstand subject line "Texas request for storage." App. to Texas's Motion for Review 61a. For purposes of § C.5, New Mexico stored the water.

Third, Texas contends that it did not request that the water be stored in New Mexico after March 2015. Therefore, according to Texas, any evaporation that occurred from March 2015 until the water was released to Texas in August 2015 should be charged to New Mexico. But Texas initially requested storage in November 2014. Even as late as July 2015, shortly before the water was released, Texas still had not requested the release of the water. Because Texas did not rescind its request for storage or otherwise ask for release before August 2015, the River Master did not err in awarding New Mexico delivery credit for evaporation that occurred after March 2015.

* * *

The water was stored in New Mexico *at the request of Texas*. Some of the water then evaporated before it was released to Texas. Under those circumstances, as the River Master correctly concluded, New Mexico is entitled to delivery credit for the evaporated water. That result is both legally accurate and entirely fair. We deny Texas's motion for review.[2]

It is so ordered.

JUSTICE BARRETT took no part in the consideration or decision of this case.

JUSTICE ALITO, concurring in the judgment in part and dissenting in part.

I agree with the Court's rejection of Texas's argument that New Mexico forfeited any objection to the River Mas-

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[2]The Court has previously stated that the River Master's determinations are reviewed only for clear error. *Texas* v. *New Mexico*, 485 U. S. 388, 393 (1988) (*per curiam*) (a final determination "shall be subject to review by this Court only on a showing that the Final Determination is clearly erroneous"). Here, New Mexico prevails even under *de novo* review, so the standard of review does not affect our judgment in this case.

ter's 2014 report because it did not file an objection by the deadline imposed by the amended decree. On this issue, there were violations all around. The River Master violated the deadlines imposed by the amended decree for filing his reports. See *Texas* v. *New Mexico*, 485 U. S. 388, 391 (1988) (*per curiam*); App. to State of New Mexico's Response 61. New Mexico did not file its objections in time, see *Texas* v. *New Mexico*, 485 U. S., at 391; App. to State of New Mexico's Response 38, 59–61, and Texas essentially acquiesced for months, if not years, see Texas's Motion for Review 9; App. to Texas's Motion for Review 269a. Under the circumstances, Texas forfeited its objection. Going forward, the States and the River Master should take better care to abide by the terms of the amended decree.

On the question whether the River Master properly allocated the water that evaporated, I would vacate and remand, with instructions to the River Master to redo his analysis in accordance with the relevant terms of the amended decree and the manual. In sanctioning the River Master's handling of this issue, the Court ignores critical facts. The decision to store the water, as well as the decision eventually to release it, was made by the federal Bureau of Reclamation. *Id.*, at 68a–69a, 236a; App. to State of New Mexico's Response 93. The Federal Government asserts that the water was held for food control purposes, Brief for United States as *Amicus Curiae* 7–8; App. to Texas's Motion for Review 68a. And, because Texas was not a party to a contract for storage, it appears that it would have been unlawful for the federal authorities to store the water simply because Texas requested that they do so. *Id.*, at 68a; see also Warren Act, 43 U. S. C. § 523.

In light of these facts, the relevance of Texas's request for storage and New Mexico's agreement with that request is unclear. Perhaps the States' exchange of e-mails should be seen as simply an agreement that the Bureau should hold the water to prevent flooding. Perhaps the River Master

thought that the Bureau acted ultra vires and stored the water for all or part of the time in question simply because Texas so requested. In any event, it is necessary to ft together in a coherent picture the actions taken by the federal and state authorities. I would instruct the River Master to tackle that task in the frst instance on remand.

Unless the River Master determines that the water was not held for food control purposes for the entirety of the time in question, it should analyze how evaporative losses of water kept for those purposes should be treated. There are several possibilities.

One is that the water constituted "unappropriated food waters." Pecos River Compact, Art. II(i), 63 Stat. 161; see also Art. III(f), *ibid.*; Art. VI(d), *id.*, at 164. The River Master has already held that the water did not fall into this category, and neither State disputes that f nding. See Texas's Motion for Review 13; New Mexico's Response 13–14. Unless the River Master or the States have second thoughts on remand, that possibility can be ruled out.

Another possibility is that evaporation of the water in question represented "consumptive use" by the United States. Art. XII, 63 Stat. 165. If that is so, the Compact specifes how such consumptive use is to be handled. *Ibid.* And a third possibility is that the water does not fall into either of the above categories.

Finally, I would hold that the River Master's amendment to the manual, insofar as it changed the deadlines imposed by the amended decree, is invalid. The River Master does not have the authority to alter the amended decree. See *Texas* v. *New Mexico*, 485 U. S., at 391. The Court declines to reach this question because it concludes that it has no effect on the principal issues before us, but I would clarify the status of this amendment so that the River Master will conform to the terms of the amended decree going forward. By declining to reach this question, the Court may be inviting future problems.

Syllabus

SHINN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* KAYER

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

No. 19–1302. Decided December 14, 2020

After being found guilty of frst-degree murder by an Arizona jury, respondent George Kayer sought "to expedite the sentencing process" and refused to fully cooperate with a mitigation specialist. Arizona law at that time authorized a judge to impose a sentence of death upon the showing of at least one qualifying aggravating circumstance and no mitigating circumstance suffcient to call for leniency. See Ariz. Rev. Stat. Ann. § 13–703. At sentencing, the judge found that the State had proved two aggravating factors beyond a reasonable doubt and that Kayer had demonstrated only one nonstatutory mitigating factor. Weighing those factors, the trial judge sentenced Kayer to death, and the Arizona Supreme Court affr med.

Kayer subsequently f led a petition for postconviction relief in Arizona Superior Court in which he argued that he had received ineffective assistance of counsel because his attorneys failed to investigate mitigating circumstances. Following a 9-day evidentiary hearing, the state court applied *Strickland* v. *Washington*, 466 U. S. 668, and denied relief. The court concluded that trial counsel's performance was not defcient given Kayer's refusal to cooperate and, in the alternative, that Kayer would have suffered no prejudice even if his counsel's performance had been defcient. The Arizona Supreme Court denied Kayer's petition for further review. Kayer then f led a habeas petition in Federal District Court. The District Court rejected Kayer's ineffective-assistance claim, but a divided Ninth Circuit panel reversed, holding that Kayer's attorneys should have begun to pursue mitigation evidence promptly after their appointment and that trial counsel's alleged failings likely affected Kayer's sentence.

Held: The court below erred in ordering issuance of a writ of habeas corpus despite ample room for reasonable disagreement about the prisoner's ineffective-assistance-of-counsel claim. Pp. 117–124.

(a) Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), state courts play the leading role in assessing challenges to state sentences based on federal law. A federal habeas court may not disturb a state-court adjudication applying the correct legal standard unless it is so obviously wrong that its error lies "beyond any possi-

bility for fairminded disagreement." *Harrington* v. *Richter*, 562 U. S. 86, 103. Because the state court here appropriately assessed Kayer's ineffective assistance claim under *Strickland* v. *Washington*, 466 U. S. 668, the Court examines only whether the state court's decision involved an "unreasonable application of" this Court's precedent, 28 U. S. C. § 2254(d). And because *Strickland* provides a general standard, the state court has great latitude "to reasonably determine that a defendant has not satisfed that standard." *Knowles* v. *Mirzayance*, 556 U. S. 111, 123. Pp. 117–119.

(b) The Ninth Circuit's decision conf icts with AEDPA and the Court's precedents. The state court's judgment must stand if a fairminded jurist could agree with either of its alternative holdings on def cient performance and prejudice. The state court's f nding that Kayer failed to show prejudice is suffcient for present purposes. The most probable reason for the state court's no-prejudice determination is simply that the new mitigation evidence offered in the postconviction proceeding did not create a substantial likelihood of a different sentencing outcome. Reasonable jurists could debate that conclusion, but it is not obviously wrong or beyond the possibility for fairminded disagreement. Kayer relies on *State* v. *Brookover*, 124 Ariz. 38—a decision vacating a death sentence in a different capital case—but capital sentencing necessarily involves an individualized determination, and prior decisions on that topic are unlikely to provide clear guidance about how courts would weigh evidence in other cases. Here, the *Brookover* decision falls far short of placing the state court's prejudice determination beyond the realm of fairminded disagreement. Pp. 119–124.

Certiorari granted; 923 F. 3d 692, vacated and remanded.

PER CURIAM.

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) restricts the power of federal courts to grant writs of habeas corpus based on claims that were "adjudicated on the merits" by a state court. 28 U. S. C. § 2254(d). When a state court has applied clearly established federal law to reasonably determined facts in the process of adjudicating a claim on the merits, a federal habeas court may not disturb the state court's decision unless its error lies "beyond any possibility for fairminded disagreement." *Harrington* v. *Richter*, 562 U. S. 86, 103 (2011). In this case, the Court of Appeals erred in ordering issuance of a writ of habeas

corpus despite ample room for reasonable disagreement about the prisoner's ineffective-assistance-of-counsel claim. In so doing, the Court of Appeals clearly violated this Court's AEDPA jurisprudence. We therefore grant the petition for certiorari and vacate the judgment below.

I

A

Respondent George Kayer murdered Delbert Haas in 1994. Haas, Kayer, and Lisa Kester were on a trip to gamble in Laughlin, Nevada. While there, Kayer borrowed money from Haas and lost it gambling. Kayer then devised a plan to rob Haas, but Kester questioned whether he could get away with robbing someone he knew. Kayer responded, "`I guess I'll just have to kill him.'" *State* v. *Kayer*, 194 Ariz. 423, 428, 984 P. 2d 31, 36 (1999). While the three drove home, Kayer took a detour to a secluded area and stopped on the side of a dirt road. After Haas exited the vehicle to urinate, Kayer grabbed a gun, sneaked up to him, and shot him pointblank in the head. After dragging Haas' body into some bushes, Kayer stole his wallet, watch, and jewelry, and drove away. Kayer soon realized that he had forgotten to take Haas' house keys, and he therefore returned to the scene of the crime. Fearing that Haas might not be dead, Kayer shot him in the head again while retrieving his keys. Subsequently, Kayer stole a variety of frear ms and other things of value from Haas' home after instructing Kester to use a police scanner to look out for police activity. The two sold many of the stolen items under aliases, but Kayer was arrested after Kester went to the police. After a jury trial before Judge William T. Kiger, Kayer was found guilty of premeditated frst-degree murder and related offenses.

After being found guilty, Kayer "made clear his desire to expedite the sentencing process." *Id.*, at 429, 984 P. 2d, at 37. He refused to fully cooperate with a mitigation specialist. When Kayer's counsel stated that the specialist needed

more time to evaluate Kayer's case, Kayer refused to agree to a continuance, and the trial court ruled him competent to make that choice. At sentencing, the judge again asked Kayer whether he would like more time for investigation, but Kayer "refused the offer and stated he would not cooperate with [the specialist] no matter how long sentencing was delayed." *Id.*, at 429–430, 984 P. 2d, at 37–38.

The court proceeded to sentencing. At that time, Arizona law required a judge, not a jury, to determine whether certain aggravating circumstances had been established, and a judge was authorized to impose a sentence of death only if at least one such aggravating circumstance was shown and there was no mitigating circumstance that was suffcient to call for leniency. See Ariz. Rev. Stat. Ann. § 13–703 (Supp. 1998); cf. *Ring* v. *Arizona*, 536 U. S. 584, 609 (2002) (subsequently requiring juries "to f nd an aggravating circumstance necessary for imposition of the death penalty"). In Kayer's case, the judge found that the State had proved two aggravating factors beyond a reasonable doubt. First, the court concluded that Kayer had been "previously convicted of a serious offense," § 13–703(F)(2), based on his conviction for frst-degree burglary in 1981, see § 13–703(H)(9); *Kayer*, 194 Ariz., at 433, 984 P. 2d, at 41. Second, it determined that Kayer murdered Haas for "pecuniary gain," see § 13–703(F)(5). On the other side of the balance, the court found that Kayer had demonstrated only one nonstatutory mitigator: his importance in his son's life. Weighing the aggravating and mitigating factors, Judge Kiger sentenced Kayer to death, and the Arizona Supreme Court affr med his conviction and sentence.

B

Kayer subsequently f led a petition for postconviction relief in Arizona Superior Court. Among his many claims, Kayer argued that he received ineffective assistance of counsel because his attorneys failed to investigate mitigating cir-

cumstances at the outset of the criminal proceedings. The sentencing judge held a 9-day evidentiary hearing.

Kayer's evidence at the hearing broke down into four main categories: evidence that he was addicted to alcohol and gambling; evidence that he had suffered a heart attack about six weeks before the murder; evidence of mental illness, including a diagnosis of bipolar disorder; and evidence that members of his family had suffered from similar addictions and illnesses in the past and that this had affected his childhood. See *Kayer* v. *Ryan*, 923 F. 3d 692, 708–713 (CA9 2019) (describing evidence in detail).

The court denied relief after applying the familiar two-part test from *Strickland* v. *Washington*, 466 U. S. 668 (1984). The court found that trial counsel's performance was not defcient because Kayer had refused to cooperate with his mitigation team's efforts to gather more mitigation evidence. And, in the alternative, the court held that "**if** there had been a f nding that the performance prong of the *Strickland* standard had been met, . . . no prejudice to the defendant can be found." App. to Pet. for Cert. 189. The court added that "[i]n stating this conclusion[, it] ha[d] considered the assertion of mental illness, physical illness, jail conditions, childhood development, and any alcohol or gambling addictions." *Ibid.* The Arizona Supreme Court denied Kayer's petition to review the denial of postconviction relief. *State* v. *Kayer*, No. CR–07–0163–PC (Nov. 7, 2007).

C

Kayer then f led an unsuccessful habeas petition in Federal District Court. See 28 U. S. C. § 2254. Relevant here, the District Court rejected Kayer's ineffective-assistance claim for failure to show prejudice. As an initial matter, the court concluded that Kayer could not "show prejudice because he waived an extension of the sentencing date and thereby waived presentation of the full-scale mitigation case." *Kayer* v. *Ryan*, 2009 WL 3352188, *21 (D Ariz., Oct. 19, 2009)

(citing *Schriro* v. *Landrigan*, 550 U. S. 465 (2007)). Moreover, the court reasoned that Kayer's mitigation evidence "fell short of the type of mitigation information that would have influenced the sentencing decision." 2009 WL 3352188, *21.

A divided Ninth Circuit panel reversed. On the question of trial counsel's performance, the panel rejected the state court's judgment because, in the judgment of the panel, Kayer's attorneys should have begun to pursue mitigation evidence promptly after their appointment. And on the question of prejudice, the court conducted its own review of the evidence and found that trial counsel's alleged failings likely affected Kayer's sentence. Based on a "comparison of Kayer's case with other Arizona cases," the panel drew two conclusions: first, that "the evidence he presented to the [state postconviction] court was suffcient to establish a statutory mitigating circumstance" of mental impairment, 923 F. 3d, at 718, and second, that there was a reasonable probability that the Arizona Supreme Court would have vacated Kayer's death sentence on direct review had it been presented with the mitigating evidence offered at the state postconviction relief hearing. For these reasons, the panel majority found that "there is a reasonable probability Kayer's sentence would have been less than death, and that the state [postconviction] court was unreasonable in concluding otherwise." *Id.*, at 723.

Judge Owens dissented in relevant part, explaining that the Arizona postconviction court had not unreasonably applied federal law in light of the aggravating and mitigating circumstances in this case. In his view, Kayer's mitigating evidence was "hardly overwhelming," and he argued that the majority had given short shrift to the "undisputedly strong aggravating factor" of pecuniary gain. *Id.*, at 727. The majority's holding, he concluded, resulted from "impermissibly substitut[ing] its own judgment that Kayer was prejudiced" for that of the state court. *Ibid.*

Arizona then sought, and the Ninth Circuit denied, rehearing en banc. Judge Bea authored a dissent from the denial of en banc review, which was joined by 11 other judges. See *Kayer* v. *Ryan*, 944 F. 3d 1147, 1156 (2019). Judge Bea asserted that "the panel majority cast aside . . . AEDPA's highly deferential standard of review." *Id.*, at 1158. Instead, he wrote, the panel majority had applied a "de-novo-masquerading-as-deference approach" that the "Supreme Court has repeatedly condemned." *Id.*, at 1168; see also *id.*, at 1157, n. 1 (citing 14 cases since 2002 in which this Court has reversed the Ninth Circuit's application of AEDPA). Under AEDPA and this Court's precedent, he contended, "there [was] no ignoring the obvious conclusion that a reasonable jurist could conclude that Kayer was not in fact prejudiced by his counsel's failings in this case." *Id.*, at 1164. The mitigating impact of Kayer's new evidence was, at best, "highly debatable." *Id.*, at 1169 (internal quotation marks omitted). Applying the proper standard of review, Judge Bea explained that "it [was] possible that fairminded jurists could f nd [Kayer's] evidence *insufficient* to establish a reasonable probability of a different outcome." *Id.*, at 1168 (citing *Richter*, 562 U. S., at 102).

After the denial of rehearing en banc, Arizona f led a petition for certiorari in this Court.

II

A

Kayer asserts that his death sentence was imposed in violation of his Sixth Amendment right to effective assistance of counsel. As the state court recognized, this Court's decision in *Strickland* v. *Washington*, 466 U. S. 668 (1984), provides the proper framework for assessing that claim. Under *Strickland*, Kayer must show that his counsel provided "defcient" performance that "prejudiced the defense." *Id.*, at 687. In the capital sentencing context, the prejudice inquiry asks "whether there is a reasonable probability that, absent

the errors, the sentencer—including an appellate court, to the extent it independently reweighs the evidence—would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." *Id.*, at 695. The *Strickland* standard is "highly demanding." *Kimmelman* v. *Morrison*, 477 U. S. 365, 382 (1986). A reasonable probability means a "`substantial,' not just `conceivable,' likelihood of a different result." *Cullen* v. *Pinholster*, 563 U. S. 170, 189 (2011) (quoting *Richter*, 562 U. S., at 112).

When an ineffective-assistance-of-counsel claim is presented in a federal habeas petition, a state prisoner faces additional burdens. Among other things, no relief may be granted "with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim," as relevant here, "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U. S. C. § 2254(d).

Here, the state court applied "the correct governing legal principle . . . to the facts of the prisoner's case," *Lockyer* v. *Andrade*, 538 U. S. 63, 75 (2003) (internal quotation marks omitted), so the question is whether its decision involved an "unreasonable application of" this Court's precedent. To meet that standard, a prisoner must show far more than that the state court's decision was "merely wrong" or "even clear error." *Virginia* v. *LeBlanc*, 582 U. S. 91, 94 (2017) (*per curiam*) (internal quotation marks omitted). The prisoner must show that the state court's decision is so obviously wrong that its error lies "beyond any possibility for fairminded disagreement." *Richter*, 562 U. S., at 103. Congress "meant" this standard to be "diffcu lt to meet." *Id.*, at 102.

We have recognized the special importance of the AEDPA framework in cases involving *Strickland* claims. Ineffective-assistance claims can function "as a way to escape rules of

waiver and forfeiture," *Richter*, 562 U. S., at 105, and they can drag federal courts into resolving questions of state law. Moreover, we have recognized that "the more general the rule, the more leeway state courts have." *Sexton* v. *Beaudreaux*, 585 U. S. 961, 968 (2018) (*per curiam*) (quoting *Renico* v. *Lett*, 559 U. S. 766, 776 (2010); quotation modifed). "[B]ecause the *Strickland* standard is a general standard, a state court has even more latitude to reasonably determine that a defendant has not satisfed that standard." *Knowles* v. *Mirzayance*, 556 U. S. 111, 123 (2009).

B

The Ninth Circuit resolved this case in a manner fundamentally inconsistent with AEDPA. Most striking, the panel "essentially evaluated the merits *de novo*, only tacking on a perfunctory statement at the end of its analysis asserting that the state court's decision was unreasonable." *Beaudreaux*, 585 U. S., at 968; see *Richter*, 562 U. S., at 101–102. In other words, it appears "to have treated the unreasonableness question as a test of its confdence in the result it would reach under *de novo* review." *Id.*, at 102. More specifca lly, the panel concluded *de novo* that "there is a reasonable probability Kayer's sentence would have been less than death," and then simply appended the statement that "the state [postconviction review] court was unreasonable in concluding otherwise." 923 F. 3d, at 723. Indeed, the panel repeatedly reached conclusions—such as that the "evidence presented to the [postconviction] court established the statutory mitigating circumstance of mental impairment," *id.*, at 719, and that there was a "causal connection between Kayer's mental impairment and the crime," *ibid.*—without ever framing the relevant question as whether a fairminded jurist could reach a different conclusion.

Applying the proper standard of review, we vacate the Court of Appeals' judgment. Judge Kiger found that Kayer had failed to show defcient performance and, assuming def-

cient performance, that he failed to show prejudice.[1] Federal courts may not disturb the judgments of state courts unless "*each* ground supporting the state court decision is examined and found to be unreasonable." *Wetzel* v. *Lambert*, 565 U. S. 520, 525 (2012) (*per curiam*). Thus, if a fairminded jurist could agree with either Judge Kiger's deficiency or prejudice holding, the reasonableness of the other is "beside the point." *Id.*, at 524; see *Parker* v. *Matthews*, 567 U. S. 37, 42 (2012) (*per curiam*) ("[I]t is irrelevant [whether] the court also invoked a ground of questionable validity"); *Richter*, 562 U. S., at 102.

We focus on the state court's prejudice determination. Insofar as the state court offered its conclusion on the prejudice question without articulating its reasoning supporting that conclusion, we "must determine what arguments or theories . . . could have supported the state court's" determination that Kayer failed to show prejudice. *Id.*, at 102. Then we must assess whether "`fairminded jurists could disagree' on the correctness of the state court's decision" if based on one of those arguments or theories. *Id.*, at 101 (quoting *Yarborough* v. *Alvarado*, 541 U. S. 652, 664 (2004)); see *Pinholster*, 563 U. S., at 188.

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[1] Section 2254 calls for review of the "last state-court adjudication on the merits." *Greene* v. *Fisher*, 565 U. S. 34, 40 (2011). The Ninth Circuit treated the Superior Court's decision, rather than the Arizona Supreme Court's denial of review, as the last state-court adjudication on the merits. Unreasoned dispositions by appellate courts sometimes qualify as adjudications on the merits. In those cases, we apply a rebuttable presumption that the appellate court's decision rested on the same grounds as the reasoned decision of a lower court. See *Wilson* v. *Sellers*, 584 U. S. 122 (2018). We may assume without deciding that the Arizona Supreme Court's denial of discretionary review was not a merits adjudication because we conclude that the Superior Court did not unreasonably apply federal law. In these circumstances, there would be no need to consider whether an unreasoned decision of a higher court may have rested on different grounds than the decision of a lower court.

Perhaps the most probable reason for Judge Kiger's no-prejudice determination is simply that the new mitigation evidence offered in the postconviction proceeding did not create a substantial likelihood of a different sentencing outcome. The Ninth Circuit generally considered that possibility, but in so doing impermissibly "substituted its own judgment for that of the state court" instead of applying deferential review. *Woodford* v. *Visciotti*, 537 U. S. 19, 25 (2002) (*per curiam*).[2] It characterized Kayer's prior-offense aggravator (frst-degree burglary) as "relatively weak" in comparison with other offenses that qualifed under the Arizona capital sentencing law. 923 F. 3d, at 718. And on the other side of the balance, it attributed considerable weight to evidence that it viewed as showing that Kayer's "capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was signifcantly impaired." Ariz. Rev. Stat. Ann. § 13–703(G)(1).

Perhaps some jurists would share those views, but that is not the relevant standard. The question is whether a fairminded jurist could take a different view. See *Visciotti*, 537 U. S., at 24–27; see also *Pinholster*, 563 U. S., at 200–202. And the answer is yes. For one thing, a fairminded jurist might differently evaluate the effect of Kayer's prior-offense aggravator (let alone the pecuniary gain aggravator). Arizona frst-degree burglary required as an element that he or an accomplice was "armed with explosives, a deadly weapon or a dangerous instrument." Ariz. Rev. Stat. Ann. § 13–

[2] In its efforts to distinguish *Woodford* v. *Visciotti*, 537 U. S. 19, the panel found it "critically important" that *Visciotti* involved postconviction review by a State Supreme Court. The panel emphasized that here, by contrast, it did not "know how the Arizona Supreme Court would have assessed [the new] evidence on collateral review because the Court denied without explanation Kayer's petition for review." *Kayer* v. *Ryan*, 923 F. 3d 692, 724 (2019). But the lower court and the parties have not identifed anything in AEDPA or this Court's precedents permitting reduced deference to merits decisions of lower state courts. See 28 U. S. C. § 2254.

1508(A) (1978). And Judge Kiger determined that Kayer "was armed with a .41 caliber handgun" during his prior offense. Excerpts of Record in No. 09–99027 (CA9), p. 935. A fairminded jurist could see Kayer's past conviction as having substantial weight in the context of this murder by shooting.

Fairminded jurists also could take a different view of Kayer's mitigating evidence. Kayer offered evidence that he suffered from bipolar disorder and untreated drinking and gambling addictions at the time of the crime, but reasonable jurists could debate the extent to which these factors signifcantly impaired his ability to appreciate the wrongfulness of his conduct or to conform his conduct to the law at the time of the murder. For example, the record reveals that Kayer had extensive opportunities to consider his actions—planning the murder in advance, driving his victim to a remote area, and subsequently returning to the murder scene and shooting the victim in the head a second time. Moreover, Kayer's planning of the murder, efforts to hide the body, interactions with Kester before and after the murder, and attempts to proft from his crimes using an alias display a measure of control and intentionality. On this record, a fairminded jurist reasonably could conclude that Kayer's evidence of mental impairment, in the words of Judge Owens, was "hardly overwhelming." 923 F. 3d, at 727; see also 944 F. 3d, at 1168–1171 (Bea, J., dissenting from denial of rehearing en banc).

Kayer counters that his claim is unusually strong because the Arizona Supreme Court would have "independently reweigh[ed] the evidence" on direct appeal. *Strickland*, 466 U. S., at 695. In his view, the similarity between his postconviction case and judgments that the State Supreme Court has issued in other cases on direct review supports his *Strickland* claim. Arizona responds that the State Supreme Court would not have reweighed the evidence in the manner contemplated by *Strickland*. And it asks this Court to hold

that past state judgments on direct review are categorically irrelevant to AEDPA review.

We need not address these broad questions in order to resolve this case. Even if Arizona's sentencing practices involved reweighing evidence on direct appeal, capital sentencing requires "an *individualized* determination on the basis of the character of the individual and the circumstances of the crime." *Zant* v. *Stephens*, 462 U. S. 862, 879 (1983). For present purposes, it suffces to say that, because the facts in each capital sentencing case are unique, the weighing of aggravating and mitigating evidence in a prior published decision is unlikely to provide clear guidance about how a state court would weigh the evidence in a later case.

Kayer, like the panel below, focuses his argument on the Arizona Supreme Court's decision in *State* v. *Brookover*, 124 Ariz. 38, 601 P. 2d 1322 (1979), but that decision falls far short of placing the state court's prejudice determination in this case beyond the realm of fairminded disagreement. In *Brookover*, there was only one aggravating circumstance (a prior conviction for a serious offense), whereas Kayer's sentencing involved two statutory aggravators.[3] And as for the mitigating evidence in *Brookover*, while it is far from clear exactly what mitigating evidence infuenced the court's individualized sentencing determination, the opinion refers to evidence that appears signifcantly different from that in this case. The *Brookover* opinion refers to evidence of a "`neurological lesion'" of a type that caused "`a relinquishment of one's self autonomy.'" *Id.*, at 41, 601 P. 2d, at 1325. By contrast, a reasonable jurist could view Kayer's mitigation evidence in a different light for the reasons explained above. In these circumstances, the *Brookover* decision does not

[3] The Ninth Circuit brushed past this distinction, reasoning that the Arizona Supreme Court *could* have found a pecuniary gain aggravating factor based on the facts of *Brookover*. But that does not change the fact that the *Brookover* court did not weigh any second aggravating factor in reaching its decision. See 124 Ariz., at 41–42, 601 P. 2d, at 1325–1326.

come close to showing the sort of "extreme malfunctio[n] in the state criminal justice syste[m]" that would permit federal court intervention. *Richter*, 562 U. S., at 102 (internal quotation marks omitted).

* * *

Under AEDPA, state courts play the leading role in assessing challenges to state sentences based on federal law. A state court heard Kayer's evidence and concluded that he failed to show prejudice. The court below exceeded its authority in rejecting that determination, which was not so obviously wrong as to be "beyond any possibility for fairminded disagreement." *Id.*, at 103. Under § 2254(d), that is "`the only question that matters.'" *Id.*, at 102.

We grant the petition for a writ of certiorari, vacate the judgment of the United States Court of Appeals for the Ninth Circuit, and remand the case to that court for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE BREYER, JUSTICE SOTOMAYOR, and JUSTICE KAGAN dissent.

Syllabus

TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* NEW YORK ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 20–366. Argued November 30, 2020—Decided December 18, 2020

The Constitution requires an "Enumeration" of the Nation's population every ten years "in such Manner" as Congress "shall by Law direct." Art. I, § 2, cl. 3. The resulting census numbers infuence consequential national affairs. See *Department of Commerce* v. *New York*, 588 U. S. 752, 759–760. With the 2020 census count underway, President Trump issued a memorandum to the Secretary of Commerce stating the administration's desire to exclude from the apportionment base of the 2020 census "aliens who are not in a lawful immigration status." 85 Fed. Reg. 44680. The President directed the Secretary to include in the census report required by Congress under 13 U. S. C. § 141 not just the tabulation of population according to the criteria promulgated by the Census Bureau for counting each State's residents, 85 Fed. Reg. 44680, but also, with certain caveats, additional information to facilitate implementation of that policy. Several legal actions challenging the policy memorandum followed. A three-judge District Court held that plaintiffs (appellees here) had standing to proceed in federal court because the memorandum was chilling aliens and their families from responding to the census, thereby degrading the quality of census data used to allocate federal funds and forcing some plaintiffs to divert resources to combat the chilling effect. The District Court declared the memorandum unlawful on numerous grounds and enjoined the Secretary from providing information necessary to implement it in the required § 141(b) report. The Government appealed.

Held: The Court lacks jurisdiction because standing has not been shown and the case is not ripe for the Court's review. The administration has made plain its desire to exclude aliens without lawful status from the apportionment base. But the President qualifed in the policy memorandum at issue that the Secretary should gather information "to the extent practicable" and that aliens should be excluded "to the extent feasible." 85 Fed. Reg. 44680. How the Executive Branch might eventually try to implement this general statement of policy is "no more than conjecture" at this time, *Los Angeles* v. *Lyons*, 461 U. S. 95, 108, as is the feasibility of implementation. Plaintiffs concede that any chilling effect from the memorandum dissipated when the census response

Syllabus

period ended. They also admit the dispute will take more concrete shape once the Secretary delivers his report under § 141(b). While they insist that the record already establishes a "substantial risk" of reduced representation and federal resources, *Clapper* v. *Amnesty Int'l USA*, 568 U. S. 398, 414, n. 5, that conclusion involves signifcant guesswork. The count is complete; the present dispute concerns the apportionment process, which remains at a preliminary stage. Given the legal and practical constraints on the Government's eventual action, any prediction about future injury, including changes in apportionment or funding, is just that: a prediction. The District Court's injunction itself shows the source of any injury to the plaintiffs to be Executive Branch action that *might* be taken in the future to exclude unspecifed individuals from the apportionment base—not the policy itself "in the abstract." *Summers* v. *Earth Island Institute*, 555 U. S. 488, 494. Letting the Executive Branch's decisionmaking process run its course brings "more manageable proportions" to the scope of the parties' dispute, *Lujan* v. *National Wildlife Federation*, 497 U. S. 871, 891, and ensures policymaking is left to elected representatives, *Hollingsworth* v. *Perry*, 570 U. S. 693, 700. The plaintiffs currently suffer no concrete harm from the challenged policy itself, which does not require them "to do anything or to refrain from doing anything." *Ohio Forestry Assn., Inc.* v. *Sierra Club*, 523 U. S. 726, 733. The Court concludes that the constitutional and statutory claims presented are not suitable for adjudication at this time, and expresses no view on the merits.

485 F. Supp. 3d 422, vacated and remanded.

Acting Solicitor General Wall argued the cause for appellants. With him on the briefs were *Acting Assistant Attorney General Clark*, *Hashim M. Mooppan*, *Sopan Joshi*, and *Nicole Frazer Reaves*.

Barbara D. Underwood, Solicitor General of New York, argued the cause for government appellees. With her on the brief were *Letitia James*, Attorney General of New York, *Steven C. Wu*, Deputy Solicitor General, *Judith N. Vale*, Senior Assistant Solicitor General, *Fiona J. Kaye*, Assistant Attorney General, *Matthew Colangelo*, and *Elena Goldstein*, *Philip J. Weiser*, Attorney General of Colorado, *William Tong*, Attorney General of Connecticut, *Kathleen Jennings*, Attorney General of Delaware, *Karl A. Racine*,

Counsel

Attorney General of the District of Columbia, *Clare E. Connors*, Attorney General of Hawaii, *Kwame Raoul*, Attorney General of Illinois, *Aaron M. Frey*, Attorney General of Maine, *Brian E. Frosh*, Attorney General of Maryland, *Maura Healey*, Attorney General of Massachusetts, *Dana Nessel*, Attorney General of Michigan, *Keith Ellison*, Attorney General of Minnesota, *Aaron D. Ford*, Attorney General of Nevada, *Gurbir S. Grewal*, Attorney General of New Jersey, *Hector H. Balderas*, Attorney General of New Mexico, *Joshua H. Stein*, Attorney General of North Carolina, *Ellen F. Rosenblum*, Attorney General of Oregon, *Josh Shapiro*, Attorney General of Pennsylvania, *Peter F. Neronha*, Attorney General of Rhode Island, *Thomas J. Donovan, Jr.*, Attorney General of Vermont, *Mark R. Herring*, Attorney General of Virginia, *Robert W. Ferguson*, Attorney General of Washington, *Joshua L. Kaul*, Attorney General of Wisconsin, *Mark A. Flessner*, *Dennis J. Herrera*, *Peter S. Holmes*, *Rolando L. Rios*, *Gary W. Kuc*, *Leslie J. Girard*, and *John Daniel Reaves*.

Dale E. Ho argued the cause for private appellees. With him on the brief were *Adriel J. Cepeda-Derieux*, *Davin Rosborough*, *Sophia Lin Lakin*, *Theresa J. Lee*, *Cecillia D. Wang*, *David D. Cole*, *Sarah Brannon*, *Ceridwen Cherry*, *John A. Freedman*, *Elisabeth S. Theodore*, *Perry Grossman*, *Christopher Dunn*, *Arthur N. Eisenberg*, *Andre I. Segura*, and *Peter J. Eliasberg*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Alabama by *Steve Marshall*, Attorney General of Alabama, *Edmund G. LaCour, Jr.*, Solicitor General, *A. Barrett Bowdre*, Deputy Solicitor General, and *James W. Davis*, *Winfield J. Sinclair*, and *Brenton M. Smith*, Assistant Attorneys General; for the State of Louisiana et al. by *Jeff Landry*, Attorney General of Louisiana, *Elizabeth B. Murrill*, Solicitor General, and *Shae McPhee*, Deputy Solicitor General, and by the Attorneys General for their respective jurisdiction as follows: *Leslie Rutledge* of Arkansas, *Daniel Cameron* of Kentucky, *Lynn Fitch* of Mississippi, *Eric Schmitt* of Missouri, *Doug Peterson* of Nebraska, *Alan Wilson* of South Carolina, *Jason Ravnsborg* of South Dakota, and *Patrick Morrisey* of West Virginia;

PER CURIAM.

Every ten years, the Nation undertakes an "Enumeration" of its population "in such Manner" as Congress "shall by Law

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for Citizens United et al. by *Jeremiah L. Morgan*, *William J. Olson*, *Robert J. Olson*, *Herbert W. Titus*, and *Michael Boos*; for the Eagle Forum Education & Legal Defense Fund by *Lawrence J. Joseph*; for the Immigration Reform Law Institute by *Christopher J. Hajec*; and for Dr. John S. Baker, Jr., by *Dr. Baker*, *pro se*, *John C. Eastman*, and *Anthony T. Caso.*

Briefs of *amici curiae* urging affr mance were f led for the United States House of Representatives by *Douglas N. Letter*, *Megan Barbero*, *Lisa K. Helvin*, *David A. O'Neil*, *Joshua A. Geltzer*, *Mary B. McCord*, *Annie L. Owens*, and *Neal Kumar Katyal*; for the State of California et al. by *Xavier Becerra*, Attorney General of California, *Michael J. Mongan*, Solicitor General, *Aimee Feinberg* and *Joshua Patashnik*, Deputy Solicitors General, *Anthony R. Hakl*, Supervising Deputy Attorney General, *R. Matthew Wise*, *Gabrielle D. Boutin*, and *Kristin A. Liska*, Deputy Attorneys General, *Kimberly M. Castle*, Associate Deputy Solicitor General, *Marian M. Johnston*, *David I. Holtzman*, *Mike Feuer*, *Valerie Flores*, *Michael J. Dundas*, *Sue Ann Salmon Evans*, and *Keith A. Yeomans*; for the City of San Jose, California, et al. by *Richard P. Bress*, *Sadik Huseny*, *Kristen Clarke*, *Jon M. Greenbaum*, and *Ezra D. Rosenberg*; for Businesses and Business Organizations by *Stuart F. Delery*, *Joshua M. Wesneski*, and *Lee R. Crain*; for Common Cause et al. by *Gregory L. Diskant*, *Jonah M. Knobler*, *Peter A. Nelson*, *Emmet J. Bondurant*, and *Michael B. Kimberly*; for Faith-Based and Immigrants' Rights Organizations by *Heather B. Repicky* and *Iván Espinoza-Madrigal*; for Historians of the Census by *Richard W. Clary*, *Antony L. Ryan*, *Helam Gebremariam*, and *Mark Trachtenberg*; for the League of Women Voters of the United States et al. by *Blaine I. Green* and *Kevin M. Fong*; for Local Governments by *James R. Williams*, *Greta S. Hansen*, *Raphael N. Rajendra*, *Jessica M. Scheller*, *Juan A. Gonzalez*, *Daniel N. Lopez*, and *Russell H. Roden*; for Members of Congress by *Elizabeth B. Wydra*, *Brianne J. Gorod*, and *David H. Gans*; for the NAACP Legal Defense & Educational Fund, Inc., by *Sherrilyn A. Ifill*, *Janai S. Nelson*, *Samuel Spital*, *Leah C. Aden*, and *Alan J. Stone*; for the National Congress of American Indians by *Daniel Lewerenz* and *John E. Echohawk;* for the National School Boards Association et al. by *Francisco M. Negrón, Jr.*, and *Sonja H. Trainor*; for the United States Conference of Catholic Bishops et al. by *Stephen W. Miller*; for Rep. Morris Jackson Brooks, Jr., et al. by *Kris W. Kobach* and *John C. Eastman*; for Michael L. Rosin by *Peter K. Stris*, *Michael N. Donofrio*,

direct." U. S. Const., Art. I, § 2, cl. 3. This census plays a critical role in apportioning Members of the House of Representatives among the States, allocating federal funds to the States, providing information for intrastate redistricting, and supplying data for numerous initiatives conducted by governmental entities, businesses, and academic researchers. *Department of Commerce* v. *New York*, 588 U. S. 752, 759–760 (2019).

Congress has given both the Secretary of Commerce and the President functions to perform in the enumeration and apportionment process. The Secretary must "take a decennial census of population . . . in such form and content as he may determine," 13 U. S. C. § 141(a), and then must report to the President "[t]he tabulation of total population by States" under the census "as required for the apportionment," § 141(b). The President in turn must transmit to Congress a "statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained" under the census. 46 Stat. 26, 2 U. S. C. § 2a(a). In that statement, the President must apply a mathematical formula called the "method of equal proportions" to the population counts in order to calculate the number of House seats for each State. *Ibid.*; see *Department of Commerce* v. *Montana*, 503 U. S. 442, 451–452 (1992).

This past July, the President issued a memorandum to the Secretary respecting the apportionment following the 2020 census. The memorandum announced a policy of excluding "from the apportionment base aliens who are not in a lawful

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Bridget C. Asay, and *Elizabeth R. Brannen*; and for Ilya Somin et al. by *Scott A. Eisman* and *Aaron R. Marcu.*

Briefs of *amici curiae* were f led for the Fair Lines America Foundation, Inc., by *Jason B. Torchinsky* and *Jonathan P. Lienhard*; for LatinoJustice PRLDEF et al. by *Celeste L. M. Koeleveld*, *Peter Mucchetti*, *Michaela Spero*, and *Juan Cartagena*; for Kenneth Prewitt et al. by *Brian A. Sutherland* and *David J. de Jesus*; and for Andrew Reamer, Ph. D., by *D. Hunter Smith.*

immigration status." 85 Fed. Reg. 44680 (2020). To facilitate implementation "to the maximum extent feasible and consistent with the discretion delegated to the executive branch," the President ordered the Secretary, in preparing his § 141(b) report, "to provide information permitting the President, to the extent practicable, to exercise the President's discretion to carry out the policy." *Ibid.* The President directed the Secretary to include such information in addition to a tabulation of population according to the criteria promulgated by the Census Bureau for counting each State's residents. *Ibid.*; see 83 Fed. Reg. 5525 (2018).

This case arises from one of several challenges to the memorandum brought by various States, local governments, organizations, and individuals. A three-judge District Court held that the plaintiffs, appellees here, had standing to proceed in federal court because the memorandum was chilling aliens and their families from responding to the census, thereby degrading the quality of census data used to allocate federal funds and forcing some plaintiffs to divert resources to combat the chilling effect. 485 F. Supp. 3d 442, 449–453, (SDNY 2020) (*per curiam*). According to the District Court, the memorandum violates § 141(b) by ordering the Secretary to produce two sets of numbers—a valid tabulation derived from the census, and an invalid tabulation excluding aliens based on administrative records outside the census. *Id.*, at 470. The District Court also ruled that the exclusion of aliens on the basis of legal status would contravene the requirement in § 2a(a) that the President state the "whole number of persons in each State" for purposes of apportionment. *Id.*, at 476–477. The District Court declared the memorandum unlawful and enjoined the Secretary from including the information needed to implement the memorandum in his § 141(b) report to the President. *Id.*, at 480–481. The Government appealed, and we postponed consideration of our jurisdiction. 592 U. S. 1022 (2020).

A foundational principle of Article III is that "an actual controversy must exist not only at the time the complaint is f led, but through all stages of the litigation." *Already, LLC* v. *Nike, Inc.*, 568 U. S. 85, 90–91 (2013) (internal quotation marks omitted). As the plaintiffs concede, any chilling effect from the memorandum dissipated upon the conclusion of the census response period. The plaintiffs now seek to substitute an alternative theory of a "legally cognizable injury" premised on the threatened impact of an unlawful apportionment on congressional representation and federal funding. *Id.*, at 100. As the case comes to us, however, we conclude that it does not—at this time—present a dispute "appropriately resolved through the judicial process." *Susan B. Anthony List* v. *Driehaus*, 573 U. S. 149, 157 (2014) (internal quotation marks omitted).

Two related doctrines of justiciability—each originating in the case-or-controversy requirement of Article III—underlie this determination. See *DaimlerChrysler Corp.* v. *Cuno*, 547 U. S. 332, 352 (2006). First, a plaintiff must demonstrate standing, including "an injury that is concrete, particularized, and imminent rather than conjectural or hypothetical." *Carney* v. *Adams*, 592 U. S. 53, 60 (2020) (internal quotation marks omitted). Second, the case must be "ripe"—not dependent on "contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas* v. *United States*, 523 U. S. 296, 300 (1998) (internal quotation marks omitted).

At present, this case is riddled with contingencies and speculation that impede judicial review. The President, to be sure, has made clear his desire to exclude aliens without lawful status from the apportionment base. But the President qualifed his directive by providing that the Secretary should gather information "to the extent practicable" and that aliens should be excluded "to the extent feasible." 85 Fed. Reg. 44680. Any prediction how the Executive Branch might eventually implement this general statement of policy is "no more than conjecture" at this time. *Los Angeles* v. *Lyons*, 461 U. S. 95, 108 (1983).

To begin with, the policy may not prove feasible to implement in any manner whatsoever, let alone in a manner substantially likely to harm any of the plaintiffs here. Pre-apportionment litigation always "presents a moving target" because the Secretary may make (and the President may direct) changes to the census up until the President transmits his statement to the House. *Franklin* v. *Massachusetts*, 505 U. S. 788, 797–798 (1992). And as the Government recognizes, Tr. of Oral Arg. 39, any such changes must comply with the constitutional requirement of an "actual Enumeration" of the persons in each State, as opposed to a conjectural estimate. See *Utah* v. *Evans*, 536 U. S. 452, 475–476 (2002); see also 13 U. S. C. § 195. Here the record is silent on which (and how many) aliens have administrative records that would allow the Secretary to avoid impermissible estimation, and whether the Census Bureau can even match the records in its possession to census data in a timely manner. See Reply Brief 4–5. Uncertainty likewise pervades which (and how many) aliens the President will exclude from the census if the Secretary manages to gather and match suitable administrative records. We simply do not know whether and to what extent the President might direct the Secretary to "reform the census" to implement his general policy with respect to apportionment. *Franklin*, 505 U. S., at 798.

While the plaintiffs agree that the dispute will take a more concrete shape once the Secretary delivers his report under § 141(b), Tr. of Oral Arg. 64, 75, they insist that the record already establishes a "substantial risk" of reduced representation and federal resources, *Clapper* v. *Amnesty Int'l USA*, 568 U. S. 398, 414, n. 5 (2013). That conclusion, however, involves a signifcant degree of guesswork. Unlike other pre-apportionment challenges, the Secretary has not altered census operations in a concrete manner that will predictably change the count. See, *e. g.*, *Department of Commerce* v. *New York*, 588 U. S., at 767–768; *Department of Commerce* v. *United States House of Representatives*, 525 U. S. 316, 331–

332 (1999). The count here is complete; the present dispute involves the apportionment process, which remains at a preliminary stage. The Government's eventual action will reflect both legal and practical constraints, making any prediction about future injury just that—a prediction.

Everyone agrees by now that the Government cannot feasibly implement the memorandum by excluding the estimated 10.5 million aliens without lawful status. Tr. of Oral Arg. 20, 63–64. Yet the only evidence speaking to the predicted change in apportionment unrealistically assumes that the President will exclude the entire undocumented population. App. 344, Decl. of Christopher Warshaw ¶11. Nothing in the record addresses the consequences of a partial implementation of the memorandum, much less supports the dissent's speculation that excluding aliens in ICE detention will impact interstate apportionment. *Post*, at 139, 142 (opinion of BREYER, J.); see Reply Brief 6.

The impact on funding is no more certain. According to the Government, federal funds are tied to data derived from the census, but not necessarily to the apportionment counts addressed by the memorandum. Brief for Appellants 19–20. Under that view, changes to the Secretary's § 141(b) report or to the President's § 2a(a) statement will not inexorably have the direct effect on downstream access to funds or other resources predicted by the dissent. *Post*, at 139–140. How that question will be addressed by the Secretary and the President is yet another fundamental uncertainty impeding proper judicial consideration at this time.

The remedy crafted by the District Court underscores the contingent nature of the plaintiffs' injuries. Its injunction prohibits the Secretary from informing the President in his § 141(b) report of the number of aliens without lawful status. In addition to implicating the President's authority under the Opinions Clause, U. S. Const., Art. II, § 2, cl. 1, the injunction reveals that the source of any injury to the plaintiffs is the action that the Secretary or President *might* take in the fu-

ture to exclude unspecifed individuals from the apportionment base—not the policy itself "in the abstract," *Summers* v. *Earth Island Institute*, 555 U. S. 488, 494 (2009). Letting the Executive Branch's decisionmaking process run its course not only brings "more manageable proportions" to the scope of the parties' dispute, *Lujan* v. *National Wildlife Federation*, 497 U. S. 871, 891 (1990), but also "ensures that we act *as judges*, and do not engage in policymaking properly left to elected representatives," *Hollingsworth* v. *Perry*, 570 U. S. 693, 700 (2013). And in the meantime the plaintiffs suffer no concrete harm from the challenged policy itself, which does not require them "to do anything or to refrain from doing anything." *Ohio Forestry Assn., Inc.* v. *Sierra Club*, 523 U. S. 726, 733 (1998).

At the end of the day, the standing and ripeness inquiries both lead to the conclusion that judicial resolution of this dispute is premature. Consistent with our determination that standing has not been shown and that the case is not ripe, we express no view on the merits of the constitutional and related statutory claims presented. We hold only that they are not suitable for adjudication at this time.

The judgment of the District Court is vacated, and the case is remanded with instructions to dismiss for lack of jurisdiction.

It is so ordered.

JUSTICE BREYER, with whom JUSTICE SOTOMAYOR and JUSTICE KAGAN join, dissenting.

The Constitution specifes that the number of Representatives afforded to each State is based on an apportionment of the total population, with each State receiving its proportional share. The Government has announced a policy to exclude aliens without lawful status from the apportionment base for the decennial census. The Government does not deny that, if carried out, the policy will harm the plaintiffs. Nor does it deny that it will implement that policy immi-

nently (to the extent it is able to do so). Under a straightforward application of our precedents, the plaintiffs have standing to sue. The question is ripe for resolution. And, in my view, the plaintiffs should also prevail on the merits. The plain meaning of the governing statutes, decades of historical practice, and uniform interpretations from all three branches of Government demonstrate that aliens without lawful status cannot be excluded from the decennial census solely on account of that status. The Government's effort to remove them from the apportionment base is unlawful, and I believe this Court should say so.

The Court disagrees. It argues that it is now uncertain just how fully the Secretary will implement the Presidential memorandum. In my view, that uncertainty does not warrant our waiting to decide the merits of the plaintiffs' claim. It is true that challenges to apportionment have often come *after* the President has transmitted his tabulation to the House. See Brief for Appellants 16 (deeming as preferable "this Court's normal approach: to decide such cases post-apportionment" (citing *Utah* v. *Evans*, 536 U. S. 452, 458–459 (2002), *Wisconsin* v. *City of New York*, 517 U. S. 1, 10–11 (1996), and *Franklin* v. *Massachusetts*, 505 U. S. 788, 790–791 (1992))). The Government asked us to take that approach here. See Tr. of Oral Arg. 7–8. But we have also reached and resolved controversies concerning the decennial census based on a substantial risk of an anticipated apportionment harm. See *Department of Commerce* v. *United States House of Representatives*, 525 U. S. 316, 332 (1999) (holding that it is "not necessary for this Court to wait until the census has been conducted to consider" government conduct that may affect apportionment). And that is what I believe the Court should do here. Waiting to adjudicate plaintiffs' claims until *after* the President submits his tabulation to Congress, as the Court seems to prefer, *ante*, at 131–132, risks needless and costly delays in apportionment. Because there is a "substantial likelihood that the [plaintiffs'] re-

quested relief . . . will redress the alleged injury," *United States House of Representatives*, 525 U. S., at 332, I would find that we can reach plaintiffs' challenge now, and affirm the lower court's holding.

I

The Court reasons that "standing has not been shown" because it is too soon to tell if the Government will act "in a manner substantially likely to harm any of the plaintiffs here." *Ante*, at 132, 134. As I have said, I believe to the contrary. Plaintiffs have alleged a justiciable controversy, and that controversy is ripe for resolution.

A

Begin with the threatened injury. The plaintiffs allege two forms of future injury: a loss of representation in the apportionment count and decreased federal funding tied to the census totals. For an injury to satisfy Article III, it "must be concrete and particularized and actual or imminent, not conjectural or hypothetical." *Susan B. Anthony List* v. *Driehaus*, 573 U. S. 149, 158 (2014) (quoting *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560 (1992); internal quotation marks omitted). We have long said that when plaintiffs "demonstrate a realistic danger of sustaining a direct injury as a result of [a policy's] operation or enforcement," they need "`not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending, that is enough.'" *Babbitt* v. *Farm Workers*, 442 U. S. 289, 298 (1979) (quoting *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 593 (1923)).

Here, inquiry into the threatened injury is unusually straightforward. The harm is clear on the face of the policy. The title of the Presidential memorandum reads: "Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census." 85 Fed. Reg. 44679 (2020) (Presidential memorandum). That memorandum announces "the policy of the United States [shall be] to exclude from the apportionment

base aliens who are not in a lawful immigration status . . . to the maximum extent feasible and consistent with the discretion delegated to the executive branch." *Id.*, at 44680. Notwithstanding the "contingencies and speculation" that "riddl[e]" this case, *ante*, at 131, the Government has not backed away from its stated aim to exclude aliens without lawful status from apportionment. See Brief for Appellants 14 (urging that the Secretary "be allowed to implement the Memorandum, at which point suit can be brought"); see also *Virginia* v. *American Booksellers Assn., Inc.*, 484 U. S. 383, 393 (1988) (f nding standing where "plaintiffs have alleged an actual and well-founded fear that the law will be enforced" and the Government "has not suggested that the newly enacted [policy] will not be enforced"). The memorandum also announces the reason for this policy: to diminish the "political infuence" and "congressional representation" of States "home to" unauthorized immigrants. 85 Fed. Reg. 44680. It notes that "one State"—now known to be California, see Brief for Appellee State of New York et al. 7—is "home to more than 2.2 million illegal aliens," and excluding such individuals from apportionment "could result in the allocation of two or three [fewer] congressional seats than would otherwise be allocated." 85 Fed. Reg. 44680. Other consequences will fow from this attempt to alter apportionment. We have previously noted that "the States use the results in drawing intrastate political districts," and "[t]he Federal Government [also] considers census data in dispensing funds through federal programs to the States." *Wisconsin* v. *City of New York*, 517 U. S. 1, 5–6 (1996).

The implementation of the memorandum will therefore bring about the very "representational and funding injuries" that the plaintiffs seek to avoid. Brief for Appellee State of New York et al. 10.

B

Given the clarity of the Presidential memorandum, it is unsurprising the Government does not contest that plaintiffs

have alleged a threatened injury. Rather, it contends that both the alleged representational and funding injuries remain "too speculative" to satisfy Article III's ripeness requirement prior to the President's actual enumeration. Brief for Appellants 19. That is because—although the Secretary's report to the President is due in just two weeks—the Bureau's plan to implement the memorandum remains uncertain and "depends on various unknowable contingencies about the data," and until "later in December or January, the Bureau cannot predict or even estimate the results." Reply Brief 4. The Government contends that given these uncertainties, "it is far from a `virtual certainty' that any appellee will `lose a [House] seat' when the Memorandum is implemented." *Id.*, at 5. It also says it is "too speculative" that plaintiffs will be disproportionately deprived of federal funding, as it is not yet certain that the tabulation the President submits to Congress for apportionment purposes will also be used as the total population for federal statutes that apportion funds on the basis of States' proportional population. Brief for Appellants 19–20. At root, the Government contends that "ripeness principles support deferring judicial review of the Memorandum until it is implemented." *Id.*, at 21.

Whether viewed as a question of standing or ripeness, the Government's arguments are insuffcient. We have said that plaintiffs need not "demonstrate that it is literally certain that the harms they identify will come about" to establish standing. *Clapper* v. *Amnesty Int'l USA*, 568 U. S. 398, 414, n. 5 (2013). Rather, an "allegation of future injury may suffce if the threatened injury is `certainly impending,' or there is a `"substantial risk" that the harm will occur.'" *Driehaus*, 573 U. S., at 158 (quoting *Clapper*, 568 U. S., at 409, 414, n. 5). Looking to the facts here, the memorandum presents the "substantial risk" that our precedents require.

The Government's current plans suggest it will be able to exclude a signifcant number of people under its policy. To

start, even a few weeks out, the Government still does not disclaim its intent to carry out the policy to the full extent it can do so. See Tr. of Oral Arg. 9–10 (stating that "we don't know what's feasible, about excluding all illegal aliens," but recognizing that "some subsets are going to be much stronger cases for the exercise of [the President's] discretion than other subsets"). Indeed, the Bureau is committed to excluding as many people as possible even if it must act beyond the December 31 statutory deadline to do so. *Id.*, at 6–7. And there is a "substantial risk" that it will be able to do so to the point that it causes signifcant harm. Both here and in related litigation below, the Government has said that as of early December, it was already feasible to exclude aliens without lawful status housed in ICE detention centers on census day, a "category [that] is likely in the tens of thousands, spread out over multiple States." Reply Brief 6; see also Brief for Appellee New York Immigration Coalition et al. 15 (citing a prior Government estimate that doing so will exclude approximately "50,000 ICE detainees"). Beyond these detainees, appellees note that the Government has also identifed at least several million more aliens without lawful status that it can "individually identify" and seek to exclude from the tabulation. *Id.*, at 15–16. We have been told the Bureau is "working very hard to try to report on" (and exclude from the apportionment tabulation) a large number of aliens without lawful status, including "almost 200,000 persons who are subject to f nal orders of removal," "700,000 DACA recipients," and about "3.2 million nondetained individuals in removal proceedings." Tr. of Oral Arg. 28–29. All told, the Bureau already possesses the administrative records necessary to exclude at least four to fve million aliens. *Id.*, at 29. Those fg ures are certainly large enough to affect apportionment.

Of equal importance, plaintiffs argue that aside from apportionment itself, the exclusion of aliens without lawful status from the apportionment count will also negatively affect

federal funding that is based on per-State proportional decennial population totals. Brief for Appellee New York Immigration Coalition et al. 18–19; see also *Department of Commerce* v. *New York*, 588 U. S. 752, 767 (2019) (noting that even a small undercount of noncitizen households can lead those States to "lose out on federal funds that are distributed on the basis of state population"). Indeed, a number of federal statutes require that funding be allocated based on the results "certifed," 16 U. S. C. §669c(c), "stated," 49 U. S. C. §47114(d)(1)(B), or "reported," 52 U. S. C. §20901(d)(4), by the decennial census. These phrases seem always to have been understood to refer to the apportionment tabulation reported to the President by the Secretary of Commerce (the report here at issue), because that is the only tabulation that the law requires to be "certifed" or "reported" as part of the decennial census. See 16 U. S. C. §669c(c); 52 U. S. C. §20901(d)(4). See generally Brief for Professor Andrew Reamer, Ph. D., as *Amicus Curiae* 2–3. The Government counters that appellees have not identifed any reason why the individuals unlawfully removed from the tabulation could not be *added back in* for purposes of applying funding statutes. Reply Brief 7. But there is no indication that the Secretary could or would do any such thing—unless of course a court holds that the removal was unlawful. And the possibility of adding back those who have otherwise been unlawfully removed from the count does not undercut a plaintiff's standing to pursue a claim of unlawfulness in the frst instance.

Moreover, the statute says that "the President shall transmit to the Congress a statement showing the whole number of persons in each State . . . *as ascertained under the* . . . decennial census of the population." 2 U. S. C. §2a(a) (emphasis added). Statute after statute pegs its funding to a State's share of "the total . . . population of all the States as determined by the last preceding decennial census." See,

e. g., 7 U. S. C. § 361c(c)(2) (allocating funding by a State's share of "the total rural [and farm] population of all" States); § 2663(b)(4) (same); 49 U. S. C. § 5305(d)(1)(A)(i) (for State share of "population of urbanized areas"); § 5311(c)(3)(B)(iii) (for State share of "the population of all rural areas"); see also U. S. Census Bureau, L. Blumerman & P. Vidal, Uses of Population and Income Statistics in Federal Funds Distribution—With a Focus on Census Bureau Data 18 (2009) (estimating that as of 2009 at least 24 federal programs automatically distributed at least $10 billion in annual funding to States keyed directly to the decennial census' state population fg ures). Given the connection between the decennial census and funding allocation, a change of a few thousand people in a State's enumeration can affect its share of federal resources.

I do not agree with the Court that the lingering uncertainty over the Government's plans renders this litigation unripe, nor that the apportionment process is at a "preliminary stage." *Ante*, at 133. For one thing, the Government has spent over a year collecting the administrative records that will be used to fulf ll the Presidential memorandum. See Exec. Order No. 13880, 84 Fed. Reg. 33823 (2019) (calling for federal departments to share administrative records so the Department of Commerce can "generate a more reliable count of the unauthorized alien population in the country . . . [and] an estimate of the aggregate number of aliens unlawfully present in each State"). For another, the Government has told us in related litigation that further delays in proceeding with apportionment beyond the statutory deadline would harm "the ability to meet contingent redistricting deadlines" in the States, because "`delays would mean deadlines that are established in state constitutions or statutes will be impossible to meet.'" See Reply Brief in *Ross* v. *National Urban League*, O. T. 2020, No. 20A62, p. 11. Acting on that concern, we granted the Government's stay pending appeal so as to hasten

the Government's efforts ahead of these deadlines. See *Ross* v. *National Urban League*, 592 U. S. 994 (2020). Presumably, waiting to resolve this issue until after the President submits his tabulation will cause further hardship by delaying redistricting further. States will begin to consider the consequences of reapportionment soon. See, *e. g.*, Del. Code Ann., Tit. 29, § 805 (2020) ("After the offcia l reporting of the 2020 federal decennial census by the President to Congress . . . the General Assembly shall, not later than June 30, 2021, reapportion and redistrict the State . . . for the general election of 2022"). It is of course possible that the Bureau will be unable to f nd a signifcant number of matches between the millions of records it has and the census data it is producing in time for the President to exclude them from his tabulation submitted to Congress. But even if the Secretary were to limit severely his compliance with the President's memorandum—say, by choosing to "report" only those 50,000 aliens that are estimated to be in ICE detention centers and omitting them from his census "tabulation"—that omission alone presents a "substantial risk" of affecting the census calculation for purposes of apportionment and funding. That is the very kind of injury of which plaintiffs complain. Taken together, these considerations demonstrate that now is the appropriate time to resolve this case. Cf. *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 149 (1967) (HARLAN, J., for the Court) (explaining that the timing of judicial review turns on "the ftness of the issues for judicial decision and the hardship to the parties of withholding court consideration").

To repeat, the President's stated goal is to reduce the number of Representatives apportioned to the States that are home to a disproportionate number of aliens without lawful status. The Government has confr med that it can identify millions of these people through administrative records. But if the Census Bureau fails to fulf ll its mandate to exclude aliens without lawful status and reduce the number of

Representatives to which certain States are entitled, it will be for reasons not in the record. Where, as here, the Government acknowledges it is working to achieve an allegedly illegal goal, this Court should not decline to resolve the case simply because the Government speculates that it might not fully succeed.

For these reasons, I believe that the plaintiffs have alleged a "substantial risk" that unlawfully subtracting aliens without lawful status from the tabulation of the total population that the President submits to Congress will inflict both apportionment and appropriations injuries on them. Those injuries are substantially likely to occur in the reasonably near future. This case squarely presents a concrete dispute and we should resolve it now.

II

On the merits, I agree with the three lower courts that have decided the issue, and I would hold the Government's policy unlawful. See 485 F. Supp. 3d 422, 472–477 (SDNY 2020) (*per curiam*); *San Jose* v. *Trump*, 497 F. Supp. 3d 680, 734–743 (ND Cal. 2020); *Useche* v. *Trump*, No. 8:20–cv–02225 (D Md., Nov. 6, 2020), pp. 21–30. Once again, the memorandum calls for "the exclusion of illegal aliens from the apportionment base" that will be used for the "reapportionment of Representatives following the 2020 census," and orders the Secretary of Commerce to transmit information permitting the President to carry out that policy. 85 Fed. Reg. 44680. The plaintiffs challenge that policy on both constitutional and statutory grounds, arguing that it contravenes the directives to report the "tabulation of total population by States . . . as required for the apportionment," 13 U. S. C. § 141(b), and to include the "whole number of persons in each State, excluding Indians not taxed." U. S. Const., Amdt. 14, § 2; 2 U. S. C. § 2a(a). Consistent with this Court's usual practice, I would avoid the constitutional dispute and resolve this case on the statutory question alone.

While that statutory question is important, it is not difficult. Our tools of statutory construction all point to "usual residence" as the primary touchstone for enumeration in the decennial census. The concept of residency does not turn, and has never turned, solely on a person's immigration status. The memorandum therefore violates Congress' clear command to count every person residing in the country, and should be set aside.

A

First, we have the text. The modern apportionment scheme dates back to 1929. See 46 Stat. 21 (1929 Act). The relevant language provides that the apportionment base shall include "the whole number of persons in each State" "as ascertained under the . . . decennial census." §22, *id.*, at 26 (codifed at 2 U. S. C. §2a(a)); see 13 U. S. C. §141(b) (requiring the Secretary to transmit the "tabulation of *total population* by States" as required for apportionment (emphasis added)). The usual meaning of "persons," of course, includes aliens without lawful status. This Court has said as much, and the Government does not argue otherwise. See *Plyler* v. *Doe*, 457 U. S. 202, 211 (1982). Similarly, the plain meaning of the phrase "in each State," both in 1929 and now, does not turn on immigration status. Rather, as we explained in *Franklin*, that phrase has always been understood to connote some idea of "usual residence," picking up a person who is an "'inhabitant'" of the State. 505 U. S., at 804–805; see also *Wesberry* v. *Sanders*, 376 U. S. 1, 13 (1964). Neither "resident" nor "inhabitant" takes account of whether someone is lawfully, as opposed to unlawfully, present. See "Inhabitant," Webster's New International Dictionary 1109 (1927) ("One who dwells or resides permanently in a place"); "Resident," *id.*, at 1814 ("One who resides in a place; one who dwells in a place for a period of more or less duration").

Moreover, the statute (like the Constitution) explicitly excludes only one category of persons from the apportionment,

"Indians not taxed," 2 U. S. C. § 2a(a), though it is evident they "reside" within the United States. Congress clearly knew how to exclude a certain population that would otherwise meet the traditional residency requirement when it wished to do so. Yet it did not single out aliens without lawful status in the 1929 Act.

Second, historical practice leaves little doubt about the statute's meaning. From the founding era until now, enumeration in the decennial census has always been concerned with residency, not immigration status. The very frst Act setting forth the decennial census procedure stated that persons should be counted if they "'usually resid[e] in the United States.'" *Franklin*, 505 U. S., at 804 (citing Act of Mar. 1, 1790, ch. 2, § 5, 1 Stat. 103). The 1820 decennial census included "foreigners not nationalized" among the schedule of whole number of persons to be tabulated within each State. See Act of March 14, 1820, 3 Stat. 550. The 1860 census included escaped slaves living in the North, although those persons were unlawfully present at that time. See *San Jose*, 497 F. Supp. 3d, at 693 (citing Record in No. 5:20–cv–5167, Doc. 64–22, pp. 5–7 (Decl. of Shannon D. Lankenau)). The 1920 census population count included a minor who had been denied lawful admission to the United States, but who was nonetheless paroled within the country during World War I until she could be sent home. See Record in No. 1:20–cv–5770, Doc. 149–2, Exh. 61, ¶3 (Decl. of Jennifer Mendelsohn) (discussing the inclusion of the minor petitioner in *Kaplan* v. *Tod*, 267 U. S. 228 (1925), in the census count). All told, at the time Congress wrote the 1929 Act, the United States had conducted more than a dozen decennial censuses. As the Government acknowledged below, none of them excluded residents solely because of immigration status. 485 F. Supp. 3d, at 476. Any contemporary understanding of the words "persons in each State" as ascertained under the "decennial census" would have reflected this longstanding and uniform practice. See

McQuiggin v. *Perkins*, 569 U. S. 383, 398, n. 3 (2013) ("Congress legislates against the backdrop of existing law"). Taken together, the history is clear as to the statute's reach; it includes the people who reside here, lawful status or not.

Third, the records from the legislative debate confr m that Congress was aware that the words of the statute bore this meaning. By 1929, federal immigration laws had been on the books for more than four decades, if not longer. See *Kleindienst* v. *Mandel*, 408 U. S. 753, 761 (1972). Some state laws for apportioning representatives explicitly excluded aliens, aware that an apportionment based simply on "the whole number of persons" under the federal decennial census would otherwise include them. See 71 Cong. Rec. 1977 (1929) (discussing a New York state statute that def ned the apportionment base to include the number of "inhabitants, excluding aliens"). Time and again throughout the debate over what became the 1929 Act, members considered (and rejected) proposals that would have excluded aliens from the apportionment base. See, *e. g.*, *id.*, at 2065–2068, 2360, 2451–2455. The debates evince a shared understanding that without such an amendment, the Act would include those "aliens" present "without the consent of the American people." *Id.*, at 1919. See also *id.*, at 1976 (Sen. Barkley) (discussing "unlawful immigrants" "who have no legal status"). This understanding was shaped not only by the ordinary meaning of the words, but also by legislators' view of the meaning of those words as they appear in the Constitution.

In particular, Senator David A. Reed of Pennsylvania noted his support for the policy of excluding aliens without lawful status, but refrained from voting in favor of a proposal to do just that because he did not believe that the Constitution allowed it. *Id.*, at 1958. See also *id.*, at 1821–1822 (reprinting C. Turney, Power of Congress To Exclude Aliens From Enumeration for Purposes of Apportionment of Representatives (April 30, 1929)); 71 Cong. Rec. 2065–2066 (dis-

cussing a proposed amendment that would immediately remove aliens from apportionment "upon the ratifcati on of any amendment to the Constitution excluding aliens"). That same year, two constitutional amendments were introduced in Congress to exclude aliens from the apportionment base. Neither succeeded. See *San Jose*, 497 F. Supp. 3d, at 690 (citing Hearing on H. J. Res. 102 and H. J. Res. 351 before the House Committee on the Judiciary, 70th Cong., 2d Sess., 1 (1929)). All told, Congress was well aware of the implications of its chosen language for the precise question we face here.

Fourth, the decades following the 1929 Act tell the same story. Just like every census that came before, no census since has excluded people based solely on immigration status. Instead, the census has continued to look to usual residence as the relevant criterion. At numerous points, the Executive Branch has reaffr med its view that the law simply does not allow for the exclusion of aliens without lawful status who reside in the United States. See, *e. g.*, 135 Cong. Rec. 22521 (1989) (printing Letter from C. Crawford, Assistant Attorney Gen., to Sen. Bingaman (Sept. 22, 1989)); Hearing before the Subcommittee on Energy, Nuclear Proliferation, and Government Processes of the Senate Committee on Governmental Affairs, Enumeration of Undocumented Aliens in the Decennial Census, 99th Cong., 1st Sess., 19 (1985) ("Traditional understanding of the Constitution and the legal direction provided by the Congress has meant that for every census since the frst one in 1790, we have tried to count residents of the country, regardless of their status") (statement of Census Bureau Director J. Keane); *Federation for Am. Immigration Reform* v. *Klutznick*, 486 F. Supp. 564, 576 (DC 1980) ("The Census Bureau has always attempted to count every person residing in a state on census day, and the population base for purposes of apportionment has always included all persons, including aliens both lawfully and unlawfully within our borders"). Those in the Legislative

Branch have routinely reached the same result. See, *e. g.*, 135 Cong. Rec. 14551 (statement of Sen. Bumpers); Hearing on S. 2366 before the Subcommittee on Energy, Nuclear Proliferation, and Federal Services of the Senate Committee on Governmental Affairs, 96th Cong., 2d Sess., 12 (1980) (statement of Sen. Javits); 86 Cong. Rec. 4372 (1940) (statement of Rep. Celler). While some members may have considered the constitutional question unsettled, all accepted that the governing statutes would have to be changed to exclude undocumented immigrants. See, *e. g.*, 135 Cong. Rec. 14540 (statement of Sen. Shelby) (proposing an amendment to allow the Census Bureau to depart from its "established policy" and exclude aliens); Hearing on S. 2366, at 1 (discussing a bill that would "require that the numbers be adjusted downward to account for people who are not in this country legally"). The apparently uniform view was that the statute requires the inclusion of all people who usually reside within the United States. See *Franklin*, 505 U. S., at 804. Each branch, interpreting the law for itself, has followed the text and history to the same conclusion.

The 2020 census, in fact, proceeded along this course, at least until the Presidential memorandum. According to the Census Bureau's regulations, the "enumeration procedures" for the 2020 census "are guided by the constitutional and statutory mandates to count all residents of the several states." 83 Fed. Reg. 5526 (2018). In adopting the Rule, the Census Bureau considered a comment expressing concern over the inclusion of "undocumented people," but adhered to its policy of counting all foreign citizens "if, at the time of the census, they are living and sleeping most of the time at a residence in the United States." *Id.*, at 5530. The Rule goes on to clarify that "*[p]eople in federal detention centers on Census Day, such as . . . Immigration and Customs Enforcement (ICE) Service Processing Centers, and ICE contract detention facilities*" will be "counted at the facility." *Id.*, at 5535. That Rule did not suggest that enu-

meration would turn on immigration status. The novelty of the interpretation refec ted in the memorandum, after nearly 100 years of a contrary and consistent position, is yet another strong indication that the Government's reading of the statute is wrong. See *Montana* v. *Wyoming*, 563 U. S. 368, 387 (2011).

To summarize: The text of the 1929 Act is concerned with usual residence, not immigration status. The history, both before and after the legislation, has for decades been in accord with that straightforward interpretation. And all three branches of Government, when facing the exact question presented in this case, have uniformly arrived at the same result.

B

In the face of this evidence, the Government principally relies on scattered historic sources from the founding era, which it argues imbue the words of the statute with a more restrictive meaning. The Government's argument relies on two assumptions. First, the Framers intended for the constitutional language "whole number of free persons" to be read as synonymous with the word "inhabitant," a legal term of art the Government believes excludes those who are in the country in violation of the law. Second, when Congress carried forward the constitutional text into the 1929 Act, it understood those words to have that narrower meaning.

There are defects in both links of this chain. First, the argument is not convincing with respect to the widely accepted meaning of the Constitution, either in the founding era or at the time the Fourteenth Amendment was enacted. In *Franklin*, we understood the term "inhabitant" as comparable to the concept of "usual residency," which, as the analysis above demonstrates, does not turn on immigration status. 505 U. S., at 804–805. The historical evidence put forward by the Government does not undermine that result.

Many of the Government's sources simply show that the "usual residence" criterion has been applied to immigrants.

See Dept. of Commerce and Labor, Bureau of the Census, Thirteenth Census of the United States: Instructions to Enumerators, April 15, 1910, p. 21 (stating that "aliens who have left this country" should not be counted because "nothing def nite can be known as to whether such aliens intend to return to this country"); *Bas* v. *Steele*, 2 F. Cas. 988, 993 (No. 1,088) (CC Pa. 1818) (concluding a foreign trader visiting a port with cargo had not established "domicil[e]" in the United States because "[g]oing to a place to obtain a cargo, and coming away, does not give [him] a domicil[e], or make him an inhabitant"). Other sources show that immigration laws themselves have taken account of similar criteria for other purposes. See *Department of Homeland Security* v. *Thuraissigiam*, 591 U. S. 103, 138 (2020) (discussing the signifcance of "`acquir[ing] any domicil[e] or residence within the United States'" for Due Process rights to attach for those not naturalized or otherwise offcia lly admitted to the country (quoting *Nishimura Ekiu* v. *United States*, 142 U. S. 651, 660 (1892))); see also *Kaplan*, 267 U. S., at 230 (asking whether a minor was legally "dwelling" in the United States for purposes of a naturalization statute). These few instances of a court asking whether an immigrant is "domiciled" in the country or has an "intent to return" to the United States do not show that immigration status is somehow a proxy for the concept of residency. To the contrary, they show that these principles can be applied to those lawfully and unlawfully present on the same terms.

The Government's argument for a narrower construction of "inhabitant" turns largely on Vattel's founding-era treatise on the law of nations, which distinguishes between the "inhabitants" and "citizens" of a nation. Brief for Appellants 35–36 (citing 1 E. deVattel, The Law of Nations § 213, p. 92 (1760)). Even assuming that the Government offers the best reading of his work, and that this reading of Vattel informed the Framers' understanding of that feld, his treatise simply cannot bear the weight the Government puts on it. Vattel's

work discussed international law, not the United States' scheme for apportionment among the States, an issue not intrinsically related to the law of nations nor one for which founding-era thinkers drew on Vattel. The Apportionment Clause emerged from an extensive and uniquely American debate over both state representation and taxation. The f nal language tied the two together, such that the burdens of taxation would fow in proportion to the benefts of representation. See Brief for Historians of the Census as *Amici Curiae* 6–11. And however infuentia l Vattel may have been for other topics, the Federal Government did not begin to restrict immigration into the United States until after the Civil War. See Brief for State of California et al. as *Amici Curiae* 17. While the Government offers isolated works from a different body of law—regarding a word that does not appear in the constitutional text—the better guide to the Constitution's meaning is the specifc historical evidence about domestic apportionment, as well as the decades of consistent practice that comports with the Clause's plain terms.

Second, and more importantly for this case, the Framers' intent is not our focus. Instead, the question is the meaning of the statute enacted in 1929. Even if the Government's sources evince some ambiguity over the meaning of the Constitution's census provisions in 1787 or 1868—a doubtful proposition—the historical record had resolved it by the time of the 1929 Act. There is simply no basis for thinking that when Congress enacted the statute that mirrored the constitutional language it was intending to depart so fundamentally from the procedures that had been consistently applied up to that point.

Apart from the historical evidence, the Government offers little more than its assertion that excluding aliens without lawful status makes good policy sense. As the memorandum reasons, "[e]xcluding . . . illegal aliens from the apportionment base is more consonant with the principles of representative democracy underpinning our system of Gov-

ernment." 85 Fed. Reg. 44680. Whatever the merits of that policy, it is not the approach to representative democracy that is set forth in the statute. Congress chose instead a view of democracy wherein the Representatives are apportioned based on "the whole number of persons in each state," not the whole number of voters, citizens, or lawful residents.

The Government is surely correct that the statute provides the President and the Secretary some degree of discretion in carrying out their statutory responsibilities. The concept of "usual residence" is an indeterminate one, which "has continued to hold broad connotations." *Franklin*, 505 U. S., at 805. The exercise of that discretion may involve a number of judgment calls. How long must a person reside in a State before it can be presumed that she intends to remain? Should prisoners be counted in the State of their incarceration, or the State where they resided prior to, and where they intend to return following, their conf nement? In resolving such issues, the Executive's judgment has consistently been directed toward the meaning of "usual residence." A policy that draws lines based on immigration status does no such thing. Most aliens without lawful status have lived exclusively in the United States for many years. See Krogstad, Passel, and Cohn, Pew Research Center, Five Facts About Illegal Immigration in the U. S. (2019). The Government does not suggest otherwise. Its own Residency Rule, which treated ICE detainees' residency in the same manner as other federal prisoners, recognizes the lack of any logical relationship between immigration status and residence. Put simply, discretion to interpret and apply a statutory command is not a blank check to depart from it. That, I fear, is what the Government has tried to do here.

Thus, the touchstone for counting persons in the decennial census is their usual residence, not their immigration status. That alone is enough to resolve this case, because the memorandum seeks to exclude anywhere between tens of thousands and millions of persons from the census count based

solely on their immigration status, and it does so for the stated goal of changing the apportionment total at the expense of the plaintiffs. The Government seems to believe that its policy can stand so long as any alien without lawful status is excludable on some other basis. However reasonable such an ad hoc approach might be in theory, that is not the policy the memorandum announces, nor does it support excluding aliens without lawful status *as a class*. To the extent there is some overlap between aliens without lawful status and persons who would not be counted under the ordinary census procedures, that cannot justify the exclusion of aliens simply on account of their immigration status. It is our task to review the policy as promulgated, and that policy draws a distinction that the statute does not allow.

III

It is worth considering the costs of the Presidential memorandum's departure from settled law. The modern census emerged from periods of intense political conf ict, whereby politicians sought to exploit census procedures to their advantage. See *Evans*, 536 U. S., at 497 (THOMAS, J., concurring in part and dissenting in part); *Department of Commerce* v. *Montana*, 503 U. S. 442, 451–452, and n. 25 (1992). In enacting the 1929 Act, Congress sought to address that problem by using clear and broad language that would cabin discretion and remove opportunities for political gamesmanship. History shows that, all things considered, that approach has served us fairly well. Departing from the text is an open invitation to use discretion to increase an electoral advantage. This produces the hostility that the 1929 Congress sought to resolve.

Because I believe plaintiffs' claims are justiciable, ripe for review, and meritorious, I would affr m the lower court's holding. I respectfully dissent.

Syllabus

CITY OF CHICAGO, ILLINOIS *v.* FULTON ET AL.

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

No. 19–357. Argued October 13, 2020—Decided January 14, 2021

The f ling of a petition under the Bankruptcy Code automatically "creates an estate" that, with some exceptions, comprises "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U. S. C. § 541(a). Section 541 is intended to include within the estate any property made available by other provisions of the Bankruptcy Code. Section 542 is one such provision, as it provides that an entity in possession of property of the bankruptcy estate "shall deliver to the trustee, and account for" that property. The f ling of a petition also automatically "operates as a stay, applicable to all entities," of efforts to collect prepetition debts outside the bankruptcy forum, § 362(a), including "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate," § 362(a)(3). Here, each respondent f led a bankruptcy petition and requested that the city of Chicago (City) return his or her vehicle, which had been impounded for failure to pay f nes for motor vehicle infractions. In each case, the City's refusal was held by a bankruptcy court to violate the automatic stay. The Seventh Circuit affr med, concluding that by retaining possession of the vehicles the City had acted "to exercise control over" respondents' property in violation of § 362(a)(3).

Held: The mere retention of estate property after the f ling of a bankruptcy petition does not violate § 362(a)(3) of the Bankruptcy Code. Under that provision, the f ling of a bankruptcy petition operates as a "stay" of "any act" to "exercise control" over the property of the estate. Taken together, the most natural reading of these terms is that § 362(a)(3) prohibits affr mative acts that would disturb the status quo of estate property as of the time when the bankruptcy petition was f led. Respondents' alternative reading would create at least two serious problems. First, reading § 362(a)(3) to cover mere retention of property would render § 542's central command—that an entity in possession of certain estate property "shall deliver to the trustee . . . such property"—largely superfuous, even though § 542 appears to be the provision governing the turnover of estate property. Second, respondents' reading would render the commands of § 362(a)(3) and § 542 contradictory. Section 542 carves out exceptions to the turnover command. Under respondents' reading, an entity would be required to turn over

Syllabus

property under § 362(a)(3) even if that property were exempt from turnover under § 542. The history of the Bankruptcy Code confirms the better reading. The Code originally included both § 362(a)(3) and § 542(a), but the former provision lacked the phrase "or to exercise control over property of the estate." When that phrase was later added by amendment, Congress made no mention of transforming § 362(a)(3) into an affirmative turnover obligation. It is unlikely that Congress would have made such an important change simply by adding the phrase "exercise control," rather than by adding a cross-reference to § 542(a) or some other indication that it was so transforming § 362(a)(3). Pp. 158–162.

926 F. 3d 916, vacated and remanded.

ALITO, J., delivered the opinion of the Court, in which all other Members joined, except BARRETT, J., who took no part in the consideration or decision of the case. SOTOMAYOR, J., filed a concurring opinion, *post*, p. 162.

Craig Goldblatt argued the cause for petitioner. With him on the briefs were *Danielle Spinelli*, *Joel Millar*, *Isley Gostin*, *Mark A. Flessner*, *Benna Ruth Solomon*, and *Myriam Zreczny Kasper*.

Colleen E. Roh Sinzdak argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Solicitor General Francisco*, *Assistant Attorney General Hunt*, *Deputy Solicitor General Stewart*, and *Mark B. Stern*.

Eugene R. Wedoff argued the cause for respondents. With him on the brief were *John P. Wonais*, *Michael A. Miller*, *Catherine Steege*, and *Carl Wedoff*.*

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*Briefs of *amici curiae* urging reversal were filed for the National Association of Counties et al. by *Scott Burnett Smith*, *Amanda Kellar Karras*, and *Lisa E. Soronen*; and for Ralph Brubaker et al. by *Michael L. Cook*.

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *Nusrat J. Choudhury*, *Rebecca Glenberg*, *David Cole*, *Jennesa Calvo-Friedman*, *Clark M. Neily III*, *Jay R. Schweikert*, *William R. Maurer*, *Kirby Thomas West*, *Nila Bala*, *Charles Duan*, and *John W. Whitehead*; for Bankruptcy Law Professors by *David R. Kuney* and *Mary Joanne Dowd*; for Geraci Law L. L. C. by *Nathan E. Curtis* and *Peter F. Geraci*; for the National Association of Bankruptcy Trustees by *Dean A. Ziehl* and *Bradford J. Sandler*; for the National Association of Chapter Thirteen Trustees by *Henry E. Hildebrand III*

JUSTICE ALITO delivered the opinion of the Court.

When a debtor files a petition for bankruptcy, the Bankruptcy Code protects the debtor's interests by imposing an automatic stay on efforts to collect prepetition debts outside the bankruptcy forum. *Ritzen Group, Inc.* v. *Jackson Masonry, LLC*, 589 U. S. 35, 42 (2020). Those prohibited efforts include "any act . . . to exercise control over property" of the bankruptcy estate. 11 U. S. C. § 362(a)(3). The question in this case is whether an entity violates that prohibition by retaining possession of a debtor's property after a bankruptcy petition is filed. We hold that mere retention of property does not violate § 362(a)(3).

I

Under the Bankruptcy Code, the filing of a bankruptcy petition has certain immediate consequences. For one thing, a petition "creates an estate" that, with some exceptions, comprises "all legal or equitable interests of the debtor in property as of the commencement of the case." § 541(a)(1). Section 541 "is intended to include in the estate any property made available to the estate by other provisions of the Bankruptcy Code." *United States* v. *Whiting Pools, Inc.*, 462 U. S. 198, 205 (1983). One such provision, § 542, is important for present purposes. Titled "Turnover of property to the estate," § 542 provides, with just a few exceptions, that an entity (other than a custodian) in possession of property of the bankruptcy estate "shall deliver to the trustee, and account for" that property.

A second automatic consequence of the filing of a bankruptcy petition is that, with certain exceptions, the petition "operates as a stay, applicable to all entities," of efforts to collect from the debtor outside of the bankruptcy forum.

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and *James M. Davis*; for the National Consumer Bankruptcy Rights Center et al. by *G. Eric Brunstad, Jr.*, *Henry J. Sommer*, and *Tara Twomey*; and for John A. E. Pottow et al. by *John A. E. Pottow, pro se.*

§ 362(a). The automatic stay serves the debtor's interests by protecting the estate from dismemberment, and it also benefits creditors as a group by preventing individual creditors from pursuing their own interests to the detriment of the others. Under the Code, an individual injured by any willful violation of the stay "shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." § 362(k)(1).

Among the many collection efforts prohibited by the stay is "any act to obtain possession of property of the estate or of property from the estate or *to exercise control over property of the estate*." § 362(a)(3) (emphasis added). The prohibition against exercising control over estate property is the subject of the present dispute.

In the case before us, the city of Chicago (City) impounded each respondent's vehicle for failure to pay fines for motor vehicle infractions. Each respondent filed a Chapter 13 bankruptcy petition and requested that the City return his or her vehicle. The City refused, and in each case a bankruptcy court held that the City's refusal violated the automatic stay. The Court of Appeals affirmed all of the judgments in a consolidated opinion. *In re Fulton*, 926 F. 3d 916 (CA7 2019). The court concluded that "by retaining possession of the debtors' vehicles after they declared bankruptcy," the City had acted "to exercise control over" respondents' property in violation of § 362(a)(3). *Id.*, at 924–925. We granted certiorari to resolve a split in the Courts of Appeals over whether an entity that retains possession of the property of a bankruptcy estate violates § 362(a)(3).[1] 589 U. S. 1126 (2019). We now vacate the judgment below.

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[1] Compare *In re Fulton*, 926 F. 3d 916, 924 (CA7 2019), *In re Weber*, 719 F. 3d 72, 81 (CA2 2013), *In re Del Mission Ltd.*, 98 F. 3d 1147, 1151–1152 (CA9 1996), and *In re Knaus*, 889 F. 2d 773, 774–775 (CA8 1989), with *In re Denby-Peterson*, 941 F. 3d 115, 132 (CA3 2019), and *In re Cowen*, 849 F. 3d 943, 950 (CA10 2017).

II

The language used in § 362(a)(3) suggests that merely retaining possession of estate property does not violate the automatic stay. Under that provision, the f ling of a bankruptcy petition operates as a "stay" of "any act" to "exercise control" over the property of the estate. Taken together, the most natural reading of these terms—"stay," "act," and "exercise control"—is that § 362(a)(3) prohibits affr mative acts that would disturb the status quo of estate property as of the time when the bankruptcy petition was f led.

Taking the provision's operative words in turn, the term "stay" is commonly used to describe an order that "suspend[s] judicial alteration of the status quo." *Nken* v. *Holder*, 556 U. S. 418, 429 (2009) (brackets in original; internal quotation marks omitted). An "act" is "[s]omething done or performed . . . ; a deed." Black's Law Dictionary 30 (11th ed. 2019); see also Webster's New International Dictionary 25 (2d ed. 1934) ("[t]hat which is done," "the exercise of power," "a deed"). To "exercise" in the sense relevant here means "to bring into play" or "make effective in action." Webster's Third New International Dictionary 795 (1993). And to "exercise" something like control is "to put in practice or carry out in action." Webster's New International Dictionary, at 892. The suggestion conveyed by the combination of these terms is that § 362(a)(3) halts any affr mative act that would alter the status quo as of the time of the f ling of a bankruptcy petition.

We do not maintain that these terms def nitively rule out the alternative interpretation adopted by the court below and advocated by respondents. As respondents point out, omissions can qualify as "acts" in certain contexts, and the term "`control'" can mean "`to have power over.'" *Thompson* v. *General Motors Acceptance Corp.*, 566 F. 3d 699, 702 (CA7 2009) (quoting Merriam-Webster's Collegiate Dictionary 272 (11th ed. 2003)). But saying that a person engages in an "act" to "exercise" his or her power over a thing communicates more than merely "having" that power. Thus the

language of § 362(a)(3) implies that something more than merely retaining power is required to violate the disputed provision.

Any ambiguity in the text of § 362(a)(3) is resolved decidedly in the City's favor by the existence of a separate provision, § 542, that expressly governs the turnover of estate property. Section 542(a), with two exceptions, provides as follows:

> "[A]n entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or beneft to the estate."

The exceptions to § 542(a) shield (1) transfers of estate property made from one entity to another in good faith without notice or knowledge of the bankruptcy petition and (2) good-faith transfers to satisfy certain life insurance obligations. See §§ 542(c), (d). Reading § 362(a)(3) to cover mere retention of property, as respondents advocate, would create at least two serious problems.

First, it would render the central command of § 542 largely superfuous. "The canon against surplusage is strongest when an interpretation would render superfuous another part of the same statutory scheme." *Yates* v. *United States*, 574 U. S. 528, 543 (2015) (plurality opinion; internal quotation marks and brackets omitted). Reading "any act . . . to exercise control" in § 362(a)(3) to include merely retaining possession of a debtor's property would make that section a blanket turnover provision. But as noted, § 542 expressly governs "[t]urnover of property to the estate," and subsection (a) describes the broad range of property that an entity "shall deliver to the trustee." That mandate would be surplusage if § 362(a)(3) already required an entity affr matively to relin-

quish control of the debtor's property at the moment a bankruptcy petition is f led.

Respondents and their *amici* contend that § 542(a) would still perform some work by specifying the party to whom the property in question must be turned over and by requiring that an entity "account for . . . the value of" the debtor's property if the property is damaged or lost. But that is a small amount of work for a large amount of text in a section that appears to be the Code provision that is designed to govern the turnover of estate property. Under this alternative interpretation, § 362(a)(3), not § 542, would be the chief provision governing turnover—even though § 362(a)(3) says nothing expressly on that question. And § 542 would be reduced to a footnote—even though it appears on its face to be the governing provision. The better account of the two provisions is that § 362(a)(3) prohibits collection efforts outside the bankruptcy proceeding that would change the status quo, while § 542(a) works within the bankruptcy process to draw far-fung estate property back into the hands of the debtor or trustee.

Second, respondents' reading would render the commands of § 362(a)(3) and § 542 contradictory. Section 542 carves out exceptions to the turnover command, and § 542(a) by its terms does not mandate turnover of property that is "of inconsequential value or beneft to the estate." Under respondents' reading, in cases where those exceptions to turnover under § 542 would apply, § 362(a)(3) would command turnover all the same. But it would be "an odd construction" of § 362(a)(3) to require a creditor to do immediately what § 542 specifca lly excuses. *Citizens Bank of Md.* v. *Strumpf*, 516 U. S. 16, 20 (1995). Respondents would have us resolve the conf icting commands by engrafting § 542's exceptions onto § 362(a)(3), but there is no textual basis for doing so.

The history of the Bankruptcy Code confr ms what its text and structure convey. Both § 362(a)(3) and § 542(a) were in-

cluded in the original Bankruptcy Code in 1978. See Bankruptcy Reform Act of 1978, 92 Stat. 2570, 2595. At the time, § 362(a)(3) applied the stay only to "any act to obtain possession of property of the estate or of property from the estate." *Id.*, at 2570. The phrase "or to exercise control over property of the estate" was not added until 1984. Bankruptcy Amendments and Federal Judgeship Act of 1984, 98 Stat. 371.

Respondents do not seriously dispute that § 362(a)(3) imposed no turnover obligation prior to the 1984 amendment. But transforming the stay in § 362 into an affr mative turnover obligation would have constituted an important change. And it would have been odd for Congress to accomplish that change by simply adding the phrase "exercise control," a phrase that does not naturally comprehend the mere retention of property and that does not admit of the exceptions set out in § 542. Had Congress wanted to make § 362(a)(3) an enforcement arm of sorts for § 542(a), the least one would expect would be a cross-reference to the latter provision, but Congress did not include such a crossreference or provide any other indication that it was transforming § 362(a)(3). The better account of the statutory history is that the 1984 amendment, by adding the phrase regarding the exercise of control, simply extended the stay to acts that would change the status quo with respect to intangible property and acts that would change the status quo with respect to tangible property without "obtain[ing]" such property.

* * *

Though the parties debate the issue at some length, we need not decide how the turnover obligation in § 542 operates. Nor do we settle the meaning of other subsections of § 362(a).[2] We hold only that mere retention of estate prop-

[2] In respondent Shannon's case, the Bankruptcy Court determined that by retaining Shannon's vehicle and demanding payment, the City also had violated §§ 362(a)(4) and (a)(6). Shannon presented those theories to the

erty after the f ling of a bankruptcy petition does not violate § 362(a)(3) of the Bankruptcy Code. The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE BARRETT took no part in the consideration or decision of this case.

JUSTICE SOTOMAYOR, concurring.

Section 362(a)(3) of the Bankruptcy Code provides that the f ling of a bankruptcy petition "operates as a stay" of "any act . . . to exercise control over property of the [bankruptcy] estate." 11 U. S. C. § 362(a)(3). I join the Court's opinion because I agree that, as used in § 362(a)(3), the phrase "exercise control over" does not cover a creditor's passive retention of property lawfully seized prebankruptcy. Hence, when a creditor has taken possession of a debtor's property, § 362(a)(3) does not require the creditor to return the property upon the f ling of a bankruptcy petition.

I write separately to emphasize that the Court has not decided whether and when § 362(a)'s other provisions may require a creditor to return a debtor's property. Those provisions stay, among other things, "any act to create, perfect, or enforce any lien against property of the estate" and "any act to collect, assess, or recover a claim against [a] debtor" that arose prior to bankruptcy proceedings. §§ 362(a)(4), (6); see, *e. g.*, *In re Kuehn*, 563 F. 3d 289, 294 (CA7 2009) (holding that a university's refusal to provide a transcript to a student-debtor "was an act to collect a debt" that violated the automatic stay). Nor has the Court addressed how bankruptcy courts should go about enforcing creditors' separate obligation to "deliver" estate property to the trustee

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Court of Appeals, but the court did not reach them. 926 F. 3d, at 926, n. 1. Neither do we.

or debtor under § 542(a). The City's conduct may very well violate one or both of these other provisions. The Court does not decide one way or the other.

Regardless of whether the City's policy of refusing to return impounded vehicles satisfes the letter of the Code, it hardly comports with its spirit. "The principal purpose of the Bankruptcy Code is to grant a `"fresh start"'" to debtors. *Marrama* v. *Citizens Bank of Mass.*, 549 U. S. 365, 367 (2007) (quoting *Grogan* v. *Garner*, 498 U. S. 279, 286 (1991)). When a debtor fles for Chapter 13 bankruptcy, as respondents did here, "the debtor retains possession of his property" and works toward completing a court-approved repayment plan. 549 U. S., at 367. For a Chapter 13 bankruptcy to succeed, therefore, the debtor must continue earning an income so he can pay his creditors. Indeed, Chapter 13 bankruptcy is available only to "individual[s] with regular income." 11 U. S. C. § 109(e).

For many, having a car is essential to maintaining employment. Take, for example, respondent George Peake. Before the City seized his car, Peake relied on his 200,000-mile 2007 Lincoln MKZ to travel 45 miles each day from his home on the South Side of Chicago to his job in Joliet, Illinois. In June 2018, when the City impounded Peake's car for unpaid parking and red-light tickets, the vehicle was worth just around $4,300 (and was already serving as collateral for a roughly $7,300 debt). Without his car, Peake had to pay for rides to Joliet. He fled for bankruptcy, hoping to recover his vehicle and repay his $5,393.27 debt to the City through a Chapter 13 plan. The City, however, refused to return the car until either Peake paid $1,250 upfront or after the court confrmed Peake's bankruptcy plan. As a result, Peake's car remained in the City's possession for months. By denying Peake access to the vehicle he needed to commute to work, the City jeopardized Peake's ability to make payments to *all* his creditors, the City included. Surely, Peake's vehicle

would have been more valuable in the hands of its owner than parked in the City's impound lot.[1]

Peake's situation is far too common.[2] Drivers in low-income communities across the country face similar vicious cycles: A driver is assessed a fine she cannot immediately pay; the balance balloons as late fees accrue; the local government seizes the driver's vehicle, adding impounding and storage fees to the growing debt; and the driver, now without reliable transportation to and from work, finds it all but impossible to repay her debt and recover her vehicle. See Brief for American Civil Liberties Union et al. as *Amici Curiae* 11–16, 31–32. Such drivers may turn to Chapter 13 bankruptcy for a "fresh start." *Marrama*, 549 U. S., at 367 (internal quotation marks omitted).[3] But without their vehicles, many debtors quickly find themselves unable to make their Chapter 13 payments. The cycle thus continues, disproportionately burdening communities of color, see Brief for American Civil Liberties Union et al. as *Amici Curiae* 17, and interfering not only with debtors' ability to earn an income and pay their creditors but also with their access to childcare, groceries, medical appointments, and other necessities.

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[1] Even though §362(a)(3) does not require turnover, whether and when the City may sell impounded cars is an entirely different matter. See, *e. g.*, *In re Cowen*, 849 F. 3d 943, 950 (CA10 2017) ("It's not hard to come up with examples of . . . `acts' that `exercise control' over, but do not `obtain possession of,' the estate's property, e. g., a creditor in possession who improperly sells property belonging to the estate").

[2] See, *e. g.*, Ramos, Chicago Seized and Sold Nearly 50,000 Cars Over Tickets Since 2011, Sticking Owners With Debt, WBEZ News (Jan. 7, 2019) (online source archived at www.supremecourt.gov).

[3] The 10-year period from 2007 to 2017, for instance, saw a tenfold increase in the number of Chicagoans filing Chapter 13 bankruptcies that involved debt to the City. See Sanchez & Kambhampati, Driven Into Debt: How Chicago Ticket Debt Sends Black Motorists Into Bankruptcy, ProPublica Illinois (Feb. 27, 2018) (online source archived at www.supremecourt.gov).

Although the Court today holds that § 362(a)(3) does not require creditors to turn over impounded vehicles, bankruptcy courts are not powerless to facilitate the return of debtors' vehicles to their owners. Most obviously, the Court leaves open the possibility of relief under § 542(a). That section requires any "entity," subject to some exceptions, to turn over "property" belonging to the bankruptcy estate. 11 U. S. C. § 542(a). The debtor, in turn, must be able to provide the creditor with "adequate protection" of its interest in the returned property, § 363(e); for example, the debtor may need to demonstrate that her car is suffciently insured. In this way, § 542(a) maximizes value for all parties involved in a bankruptcy: The debtor is able to use her asset, which makes it easier to earn an income; the debtor's unsecured creditors, in turn, receive timely payments from the debtor; and the debtor's secured creditor, for its part, receives "adequate protection [to] replace the protection afforded by possession." *United States* v. *Whiting Pools, Inc.*, 462 U. S. 198, 207 (1983). Secured creditors cannot opt out of this arrangement. As even the City acknowledges, § 542(a) "impose[s] a duty of turnover that is mandatory when the statute's conditions . . . are met." Brief for Petitioner 37.

The trouble with § 542(a), however, is that turnover proceedings can be quite slow. The Federal Rules of Bankruptcy Procedure treat most "proceeding[s] to recover . . . property" as "adversary proceedings." Rule 7001(1). Such actions are, in simplifed terms, "essentially full civil lawsuits carried out under the umbrella of [a] bankruptcy case." *Bullard* v. *Blue Hills Bank*, 575 U. S. 496, 505 (2015). Because adversary proceedings require more process, they take more time. Of the turnover proceedings f led after July 2019 and concluding before June 2020, the average case was pending for over 100 days. See Administrative Offce of the United States Courts, Time Intervals in Months From Filing to Closing of Adversary Proceedings Filed Under 11 U. S. C.

§ 542 for the 12-Month Period Ending June 30, 2020, Washington, DC: Sept. 25, 2020.

One hundred days is a long time to wait for a creditor to return your car, especially when you need that car to get to work so you can earn an income and make your bankruptcy-plan payments. To address this problem, some courts have adopted strategies to hurry things along. At least one bankruptcy court has held that § 542(a)'s turnover obligation is automatic even absent a court order. See *In re Larimer*, 27 B. R. 514, 516 (Idaho 1983). Other courts apparently will permit debtors to seek turnover by simple motion, in lieu of f ling a full adversary proceeding, at least where the creditor has received adequate notice. See Tr. of Oral Arg. 81 (counsel for the City stating that "[i]n most bankruptcy courts, if a creditor responds to a motion [for turnover] by" arguing that the debtor should have instituted an adversary proceeding, the bankruptcy judge will ask whether the creditor received "actual notice"); Brief for United States as *Amicus Curiae* 32 (reporting that "some courts have granted [turnover] orders based solely on a motion"); but see, *e. g.*, *In re Denby-Peterson*, 941 F. 3d 115, 128–131 (CA3 2019) (holding that debtors must seek turnover through adversary proceedings). Similarly, even when a turnover request does take the form of an adversary proceeding, bankruptcy courts may f nd it prudent to expedite proceedings or order preliminary relief requiring temporary turnover. See, *e. g.*, *In re Reid*, 423 B. R. 726, 727–728 (Bkrtcy. Ct. ED Pa. 2010); see generally 10 Collier on Bankruptcy ¶ 7065.02 (16th ed. 2019).

Ultimately, however, any gap left by the Court's ruling today is best addressed by rule drafters and policymakers, not bankruptcy judges. It is up to the Advisory Committee on Rules of Bankruptcy Procedure to consider amendments to the Rules that ensure prompt resolution of debtors' requests for turnover under § 542(a), especially where debtors' vehicles are concerned. Congress, too, could offer a statutory fx, either by ensuring that expedited review is available

for § 542(a) proceedings seeking turnover of a vehicle or by enacting entirely new statutory mechanisms that require creditors to return cars to debtors in a timely manner.

Nothing in today's opinion forecloses these alternative solutions. With that understanding, I concur.

Per Curiam

SCHEIN, INC. *v.* ARCHER & WHITE SALES, INC.

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

No. 19–963. Argued December 8, 2020—Decided January 25, 2021
Certiorari dismissed. Reported below: 935 F. 3d 274.

Kannon K. Shanmugam argued the cause for petitioner. With him on the briefs were *William T. Marks*, *Stacie M. Fahsel*, *Paul F. Schuster*, *Cynthia Keely Timms*, and *Richard C. Godfrey*.

Daniel L. Geyser argued the cause for respondent. With him on the brief were *Lewis T. LeClair* and *Gary Cruciani*.*

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

It is so ordered.

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*Briefs of *amici curiae* urging vacatur were filed for Benco Dental Supply Co. by *Kenneth L. Racowski* and *Mark A. Kasten*; for the Chamber of Commerce of the United States of America by *Andrew J. Pincus*, *Archis A. Parasharami*, and *Daniel E. Jones*; and for DRI-The Voice of the Defense Bar by *David M. Axelrad*, *Felix Shafir*, and *John F. Querio*.

Briefs of *amici curiae* urging affirmance were filed for the American Association for Justice et al. by *Matthew W. H. Wessler*, *Jennifer D. Bennett*, *Leah M. Nicholls*, and *Tobias L. Millrood*; for Arbitrators et al. by *Imre Stephen Szalai* and *Richard D. Faulkner*; for the Constitutional Accountability Center by *Elizabeth B. Wydra*, *Brianne J. Gorod*, and *Ashwin P. Phatak*; and for William R. Weinstein by *William R. Weinstein*, *pro se*.

Briefs of *amici curiae* were filed for Daniel D. Barnhizer et al. by *Erin Glenn Busby*, *Lisa R. Eskow*, and *Michael F. Sturley*; and for George A. Bermann by *J. Samuel Tenenbaum*.

Syllabus

FEDERAL REPUBLIC OF GERMANY ET AL. *v.* PHILIPP ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19–351. Argued December 7, 2020—Decided February 3, 2021

Respondents are the heirs of German Jewish art dealers who formed a consortium during the waning years of the Weimar Republic to purchase a collection of medieval relics known as the Welfenschatz. The heirs allege that when the Nazi government rose to power, it unlawfully coerced the consortium into selling the collection to Prussia for a third of its value. The relics are currently maintained by the Stiftung Preussischer Kulturbesitz (SPK), an instrumentality of the Federal Republic of Germany, and displayed at a Berlin museum. After unsuccessfully seeking compensation in Germany, the heirs brought several common law property claims in United States District Court against Germany and SPK (collectively Germany). Germany moved to dismiss, arguing that it was immune from suit under the Foreign Sovereign Immunities Act. As relevant, Germany asserted that the heirs' claims did not fall within the FSIA's exception to sovereign immunity for "property taken in violation of international law," 28 U. S. C. § 1605(a)(3), because a sovereign's taking of its own nationals' property is not unlawful under the international law of expropriation. The heirs countered that the exception did apply because Germany's purchase of the Welfenschatz was an act of genocide, and the relics were therefore taken in violation of international human rights law. The District Court denied Germany's motion to dismiss, and the D. C. Circuit affr med.

Held: The phrase "rights in property taken in violation of international law," as used in the FSIA's expropriation exception, refers to violations of the international law of expropriation and thereby incorporates the domestic takings rule. Pp. 175–187.

(a) The heirs contend that their claims fall within the FSIA's exception for cases involving "property taken in violation of international law," § 1605(a)(3)—a provision known as the expropriation exception—because the forced sale of the Welfenschatz constituted an act of genocide, and genocide is a violation of international human rights law. Germany argues that the relevant international law is not the law of genocide but the international law of expropriation, under which a for-

eign sovereign's taking of its own nationals' property remains a domestic affair. Pp. 175–185.

(1) The "domestic takings rule" invoked by Germany derives from the premise that international law customarily concerns relations among states, not between states and individuals. Historically, a sovereign's taking of a foreign national's property implicated international law because it constituted an injury to the state of the alien's nationality. A domestic taking, by contrast, did not interfere with relations among states. This domestic takings rule endured even as a growing body of human rights law made states' treatment of individual human beings a matter of international concern. And those who criticized the treatment of property rights under international law did so on the ground that *all* sovereign takings, not just domestic takings, were outside the scope of that law. This dispute over the existence of international law constraints on sovereign takings eventually reached the Court in *Banco Nacional de Cuba* v. *Sabbatino*, 376 U. S. 398, 436. Hesitant to delve into this controversy, the Court instead invoked the act of state doctrine. In response, Congress passed the Second Hickenlooper Amendment to the Foreign Assistance Act of 1964, which prohibits United States courts from applying the act of state doctrine where a "right[ ] to property is asserted" based upon a "taking . . . by an act of that state in violation of . . . international law." 22 U. S. C. § 2370(e)(2). Courts and commentators understood the Amendment to permit adjudication of claims *Sabbatino* had avoided deciding, *i. e.*, claims against other countries for expropriation of American-owned property. But nothing in the Amendment purported to alter any rule of international law, including the domestic takings rule. Congress used nearly identical language when it crafted the FSIA's expropriation exception twelve years later. Based on this historical and legal background, courts reached a "consensus" that the expropriation exception's "reference to `violation of international law' does not cover expropriations of property belonging to a country's own nationals." *Republic of Austria* v. *Altmann*, 541 U. S. 677, 713 (BREYER, J., concurring). Pp. 176–180.

(2) The heirs concede that the international law of expropriation retained the domestic takings rule at the time of the FSIA's enactment, but they read "rights in property taken in violation of international law" to incorporate any international norm, including international human rights law, rather than merely the international law of expropriation. The text of the FSIA's expropriation exception, however, supports Germany's reading. The exception places repeated emphasis on property and property-related rights, while injuries and acts associated with violations of human rights law, such as genocide, are notably lacking—a remarkable omission if the provision was intended to provide relief for

atrocities such as the Holocaust. A statutory phrase concerning property rights most sensibly references the international law governing property rights, rather than the law of genocide. The heirs' position would arguably force courts themselves to violate international law not only by ignoring the domestic takings rule, but also by derogating international law's preservation of sovereign immunity for violations of human rights law. Germany's interpretation of the exception is also more consistent with the FSIA's express goal of codifying the restrictive theory of sovereign immunity, 28 U. S. C. § 1602, under which immunity extends to a sovereign's public, but not private, acts. It would destroy the Act's distinction between private and public acts were the Court to subject all manner of sovereign public acts to judicial scrutiny under the FSIA by transforming the expropriation exception into an all-purpose jurisdictional hook for adjudicating human rights violations. Pp. 180–183.

(3) Other FSIA provisions confr m Germany's position. The heirs' approach would circumvent the reticulated boundaries Congress placed in the FSIA with regard to bringing claims asserting human rights violations. One FSIA exception, for example, provides jurisdiction over claims "in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property," but only where the relevant conduct "occurr[ed] in the United States." § 1605(a)(5). And the FSIA's terrorism exception eliminates sovereign immunity for state sponsors of terrorism, but only for certain human rights claims, brought by certain victims, against certain defendants. §§ 1605A(a),(h). Such restrictions would be of little consequence if human rights abuses could be packaged as violations of property rights and thereby brought within the expropriation exception. Pp. 183–185.

(b) The heirs' counterarguments cannot overcome the text, context, and history of the expropriation exception. They claim that the 2016 Foreign Cultural Exchange Jurisdictional Immunity Clarifcati on Act—which amends the FSIA to explain that participation in specifed "art exhibition activities" does not qualify as "commercial activity" under the expropriation exception, § 1605(h)—demonstrates that Congress anticipated that Nazi-era claims could be adjudicated under the exception. Congress's effort to preserve sovereign immunity in a narrow, particularized context, however, does not support the broad elimination of sovereign immunity across all areas of law. Other statutes aimed at promoting restitution to Holocaust victims, on which the heirs rely, generally encourage redressing those injuries outside of public court systems and do not speak to sovereign immunity. See, *e. g.*, Holocaust Expropriated Art Recovery Act of 2016, 130 Stat. 1524. Pp. 185–187.

(c) This Court does not address Germany's argument that the District Court was obligated to abstain from deciding the case on international

comity grounds or the heirs' alternative argument that the sale of the Welfenschatz is not subject to the domestic takings rule because the consortium members were not German nationals at the time of the transaction. P. 187.

894 F. 3d. 406, vacated and remanded.

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

Jonathan M. Freiman argued the cause for petitioners. With him on the briefs were *Tadhg Dooley*, *Benjamin M. Daniels*, and *David R. Roth.*

Deputy Solicitor General Kneedler argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Acting Solicitor General Wall*, *Sopan Joshi*, *Colleen E. Roh Sinzdak*, *Sharon Swingle*, and *Joshua K. Handell.*

Nicholas M. O'Donnell argued the cause for respondents. With him on the brief was *Erika L. Todd.**

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*Briefs of *amici curiae* urging reversal were f led for Foreign International Law Scholars et al. by *Lisa M. Geary*; for Société Nationale SNCF SA by *John B. Bellinger III*, *Sally L. Pei*, and *R. Reeves Anderson*; and for Davis R. Robinson et al. by *James H. Hulme* and *Timothy J. Feighery.*

Briefs of *amici curiae* urging affr mance were f led for the American Association of Jewish Lawyers and Jurists et al. by *Arthur R. Traldi* and *Stephen R. Greenwald*; for the Florida Holocaust Museum et al. by *Donald S. Burris*, *Joshua Magidson*, and *Andrew Sasso*; for the Holocaust Art Restitution Project, Inc., by *Pierre Ciric*; for the Holocaust Survivors Foundation USA, Inc., et al. by *Samuel J. Dubbin*; for Members of the United States House of Representatives by *Akiva Shapiro*; for the National Jewish Commission on Law and Public Affairs et al. by *Nathan Lewin*, *Alyza D. Lewin*, and *Dennis Rapps*; and for the World Jewish Congress et al. by *Thomas R. Kline* and *L. Eden Burgess.*

Briefs of *amici curiae* were f led for Holocaust and Nuremberg Historians by *Owen C. Pell*; for The 1939 Society et al. by *Benjamin G. Shatz*, *Stanley A. Goldman*, and *Stanley W. Levy*; for William S. Dodge et al. by *Geoffrey M. Klineberg* and *Daniel S. Severson*; for Samuel Estreicher et al. by *Amelia L. B. Sargent*; and for Peter Toren by *Lawrence S. Robbins*, *Gary A. Orseck*, *Ariel N. Lavinbuk*, and *D. Hunter Smith.*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The Foreign Sovereign Immunities Act provides that foreign nations are presumptively immune from the jurisdiction of United States courts. The statute, however, sets forth several specifc exceptions. One such exception provides that a sovereign does not enjoy immunity in any case "in which rights in property taken in violation of international law are in issue." 28 U. S. C. § 1605(a)(3). The question presented is whether a country's alleged taking of property from its own nationals falls within this exception.

I

This case concerns several dozen medieval relics and devotional objects known as the Welfenschatz. The treasure ("schatz") of the German Welf dynasty, the pieces date back to the early days of the Holy Roman Empire and occupy a unique position in German history and culture. The collection was assembled within Germany's Brunswick Cathedral over the course of several centuries, before being moved to a Hanoverian chapel in 1671 and later to Switzerland for safekeeping in the wake of World War I.

During the waning years of the Weimar Republic, a consortium of three art fr ms owned by Jewish residents of Frankfurt purchased the Welfenschatz from the Duke of Brunswick. By 1931, the consortium had sold about half of the collection's pieces to museums and individuals in Europe and the United States, including many to the Cleveland Museum of Art, where they reside today.

Conditions facing the consortium changed dramatically after the collapse of the German economy and the rise of the Nazi government. After ascending to power, Hermann Goering—Adolf Hitler's deputy and the Prime Minister of Prussia—became interested in the remainder of the Welfenschatz. The complaint alleges that he employed a combination of political persecution and physical threats to coerce the consortium into selling the remaining pieces to Prussia

in 1935 for approximately one-third of their value. Two of the consortium members fled the country following the sale, and the third died in Germany shortly thereafter.

The United States took possession of the Welfenschatz in the course of the occupation of Nazi Germany at the end of the war, eventually turning the collection over to the Federal Republic of Germany. For nearly 60 years, the treasure has been maintained by Stiftung Preussischer Kulturbesitz (SPK)—the Prussian Cultural Heritage Foundation—and it is now displayed at a museum in Berlin. SPK is an instrumentality of the Federal Republic.

Respondents are two United States citizens and a citizen of the United Kingdom who trace their lineages back to the three members of the consortium. The heirs first approached SPK claiming that the sale of the Welfenschatz to the Prussian Government was unlawful. SPK conducted its own investigation of the sale and determined that the transaction occurred at a fair market price without coercion.

In 2014, the parties agreed to submit the claim to the German Advisory Commission for the Return of Cultural Property Seized as a Result of Nazi Persecution, Especially Jewish Property. Germany established the Advisory Commission under the Washington Conference Principles on Nazi-Confiscated Art, an initiative spearheaded by the United States to encourage the development of new mechanisms for resolving Nazi-era claims. See Brief for United States as *Amicus Curiae* 4. After hearing from expert witnesses and reviewing documentary evidence, the Commission likewise concluded that the sale had occurred at a fair price without duress.

Disappointed by the proceedings in Germany, the heirs filed suit in Federal District Court in Washington, D. C. They brought several common law property claims against Germany and SPK, seeking $250 million in compensation. Petitioners SPK and the Federal Republic of Germany—collectively Germany—moved to dismiss the case. Relevant

here, Germany argued that it was immune from suit because the heirs' claims did not fall within the FSIA's exception to immunity for "property taken in violation of international law." See 28 U. S. C. § 1605(a)(3); see also § 1603(a) (def ning "foreign state" to include "an agency or instrumentality of a foreign state"). In doing so, Germany reasoned that the purchase of the Welfenschatz could not have violated international law because a sovereign's taking of its own nationals' property is not unlawful under the international law of expropriation. The heirs responded that the exception did apply because Germany's purchase of the Welfenschatz was an act of genocide and the taking therefore violated the international law of genocide.

The District Court denied Germany's motion, 248 F. Supp. 3d 59, 70–74 (DC 2017), and a panel of the D. C. Circuit affr med, 894 F. 3d 406 (2018). The panel agreed with the heirs that the exception for property taken in violation of international law was satisfed because "genocide perpetrated by a state even against its own nationals is a violation of international law." *Id.*, at 410–411 (quoting *Simon* v. *Republic of Hungary*, 812 F. 3d 127, 145 (CADC 2016); alterations omitted). The D. C. Circuit declined Germany's request for en banc review. 925 F. 3d 1349 (2019) (*per curiam*).

Judge Katsas dissented from the denial of rehearing en banc. In his view, the majority's analysis erroneously "ma[de] the district court sit as a war crimes tribunal to adjudicate claims of genocide," while "clear[ing] the way for a wide range of litigation against foreign sovereigns for public acts committed within their own territories." *Id.*, at 1350.

We granted certiorari. 591 U. S. 1025 (2020).

II

Enacted in 1976, the Foreign Sovereign Immunities Act supplies the ground rules for "obtaining jurisdiction over a foreign state in the courts of this country." *Argentine Re-*

public v. *Amerada Hess Shipping Corp.*, 488 U. S. 428, 443 (1989). The Act creates a baseline presumption of immunity from suit. § 1604. "[U]nless a specifed exception applies, a federal court lacks subject-matter jurisdiction over a claim against a foreign state." *Saudi Arabia* v. *Nelson*, 507 U. S. 349, 355 (1993).

The heirs contend that their claims fall within the exception for "property taken in violation of international law," § 1605(a)(3), because the coerced sale of the Welfenschatz, their property, constituted an act of genocide, and genocide is a violation of international human rights law. Germany argues that the exception is inapplicable because the relevant international law is the international law of property—not the law of genocide—and under the international law of property a foreign sovereign's taking of its own nationals' property remains a domestic affair. This "domestic takings rule" assumes that what a country does to property belonging to its own citizens within its own borders is not the subject of international law. See *Bolivarian Republic of Venezuela* v. *Helmerich & Payne Int'l Drilling Co.*, 581 U. S. 170, 181 (2017) (citing Restatement (Third) of Foreign Relations Law of the United States § 712 (1986) (Restatement (Third))).

A

Known at the founding as the "law of nations," what we now refer to as international law customarily concerns relations among sovereign states, not relations between states and individuals. See *Banco Nacional de Cuba* v. *Sabbatino*, 376 U. S. 398, 422 (1964) ("The traditional view of international law is that it establishes substantive principles for determining whether one country has wronged another.").

The domestic takings rule invoked by Germany derives from this premise. Historically, a sovereign's taking of a foreigner's property, like any injury of a foreign national, implicated the international legal system because it "constituted an injury to the state of the alien's nationality." Brad-

ley & Goldsmith, Customary International Law as Federal Common Law: A Critique of the Modern Position, 110 Harv. L. Rev. 815, 831, n. 106 (1997); see S. Friedman, Expropriation in International Law 5, 139 (1953). Such mistreatment was an affront to the sovereign, and "therefore the alien's state alone, and not the individual, could invoke the remedies of international law." Bradley, *supra*, at 831, n. 106. A domestic taking by contrast did not interfere with relations among states. See E. de Vattel, 3 The Law of Nations § 81, p. 138 (C. Fenwick transl. 1916) ("Even the property of individuals, taken as a whole, is to be regarded as the property of the Nation with respect to other Nations."); see also *United States* v. *Belmont*, 301 U. S. 324, 332 (1937) ("What another country has done in the way of taking over property of its nationals . . . is not a matter for judicial consideration here.").

The domestic takings rule has deep roots not only in international law but also in United States foreign policy. Secretary of State Cordell Hull most famously expressed the principle in a 1938 letter to the Mexican Ambassador following that country's nationalization of American oil felds. The Secretary conceded "the right of a foreign government to treat its own nationals in this fashion if it so desires. This is a matter of domestic concern." Letter from C. Hull to C. Nájera (July 21, 1938), reprinted in 5 Foreign Relations of the United States Diplomatic Papers 677 (1956). The United States, however, could not "accept the idea" that "these plans can be carried forward at the expense of our citizens." *Ibid.*

The domestic takings rule endured even as international law increasingly came to be seen as constraining how states interacted not just with other states but also with individuals, including their own citizens. The United Nations Universal Declaration of Human Rights and Convention on the Prevention of Genocide became part of a growing body of human rights law that made "how a state treats individual

human beings . . . a matter of international concern." Bradley, *supra*, at 832 (quoting Restatement (Third), pt. VII, Introductory Note, at 144–145). These human rights documents were silent, however, on the subject of property rights. See Friedman, *supra*, at 107. International tribunals therefore continued to maintain that international law governed "confscati on of the property of foreigners," but "measures taken by a State with respect to the property of its own nationals are not subject to these principles." *Gudmundsson* v. *Iceland*, Appl. No. 511/59, 1960 Y. B. Eur. Conv. on H. R. 394, 423–424 (decision of the European Commission on Human Rights).

Some criticized the treatment of property rights under international law, but they did so on the ground that *all* sovereign takings were outside the scope of international law, not just domestic takings. In the 1950s and 1960s, a growing chorus of newly independent states, particularly in Latin America, resisted any foreign restraint on their ability to nationalize property. See Young, The Story of Banco Nacional de Cuba v. Sabbatino, in Federal Courts Stories 422–423 (V. Jackson & J. Resnik eds. 2010). Put differently, states and scholars disagreed over whether international law provided a remedy for a sovereign's interference with anyone's property rights, not whether domestic takings were outside the purview of international law. That principle was beyond debate.

We confronted this dispute over the existence of international law constraints on sovereign takings in *Sabbatino*, where we were asked to decide claims arising out of Cuba's nationalization of American sugar interests in 1960. 376 U. S., at 403. This Court observed that there were "few if any issues in international law today on which opinion seems to be so divided as the limitations on a state's power to expropriate the property *of aliens*." *Id.*, at 428 (emphasis added). Hesitant to delve into this controversy, we instead invoked the act of state doctrine, which prevents United

States courts from determining the validity of the public acts of a foreign sovereign. *Id.*, at 436.

Congress did not applaud the Court's reticence. Within months of *Sabbatino*, it passed the Second Hickenlooper Amendment to the Foreign Assistance Act of 1964. The Amendment prohibits United States courts from applying the act of state doctrine where a "right[ ] to property is asserted" based upon a "taking . . . by an act of that state in violation of the principles of international law." 22 U. S. C. § 2370(e)(2). Courts and commentators understood the Amendment to permit adjudication of claims the *Sabbatino* decision had avoided—claims against foreign nations for expropriation of American-owned property. But nothing in the Amendment purported to alter any rule of international law, including the domestic takings rule. See *F. Palicio y Compania, S. A.* v. *Brush*, 256 F. Supp. 481, 487 (SDNY 1966) (interpreting the Hickenlooper Amendment to displace *Sabbatino* but dismissing the suit on the ground that "confsca - tions by a state of the property of its own nationals, no matter how fagrant . . . , do not constitute violations of international law"), summarily aff'd, 375 F. 2d 1011 (CA2 1967); *Banco Nacional de Cuba* v. *Farr*, 383 F. 2d 166, 173–176 (CA2 1967); Restatement (Second) of Foreign Relations Law of the United States § 185 (1965) (Restatement (Second)); Lillich, The Proper Role of Domestic Courts in the International Legal Order, 11 Va. J. Int'l L. 9, 29, 34 (1970).

Congress used language nearly identical to that of the Second Hickenlooper Amendment 12 years later in crafting the FSIA's expropriation exception. As noted, it provides that United States courts may exercise jurisdiction over a foreign sovereign in any case "in which rights in property taken in violation of international law are in issue." 28 U. S. C. § 1605(a)(3).

Based on this historical and legal background, courts arrived at a "consensus" that the expropriation exception's "reference to `violation of international law' does not cover

expropriations of property belonging to a country's own nationals." *Republic of Austria* v. *Altmann*, 541 U. S. 677, 713 (2004) (BREYER, J., concurring).

B

The heirs urge us to change course. They read "rights in property taken in violation of international law" not as an invocation of the international law governing property rights, but as a broad incorporation of any international norm. Focusing on human rights law, the heirs rely on the United Nations Convention on Genocide, which defines genocide as "deliberately inflicting on [a] group conditions of life calculated to bring about its physical destruction in whole or in part." Convention on the Prevention and Punishment of the Crime of Genocide, Art. II, Dec. 9, 1948, 78 U. N. T. S. 277, 280. According to the heirs, the forced sale of their ancestors' art constituted an act of genocide because the confiscation of property was one of the conditions the Third Reich inflicted on the Jewish population to bring about their destruction.

We need not decide whether the sale of the consortium's property was an act of genocide, because the expropriation exception is best read as referencing the international law of expropriation rather than of human rights. We do not look to the law of genocide to determine if we have jurisdiction over the heirs' common law property claims. We look to the law of property.

And in 1976, the state of that body of law was clear: A "taking of property" could be "wrongful under international law" only where a state deprived "an alien" of property. Restatement (Second) § 185; see also *Permanent Mission of India to United Nations* v. *City of New York*, 551 U. S. 193, 199–200 (2007) (noting our consistent practice of interpreting the FSIA in keeping with "international law at the time of the FSIA's enactment" and looking to the contemporary Restatement for guidance). As explained above, this rule

survived the advent of modern human rights law, including the United Nations Convention on Genocide. Congress drafted the expropriation exception and its predecessor, the Hickenlooper Amendment, against that legal and historical backdrop. See *Taggart* v. *Lorenzen*, 587 U. S. 554, 560 (2019).

The heirs concede that at the time of the FSIA's enactment the international law of expropriation retained the domestic takings rule. See Restatement (Second) § 192. But they argue that Congress captured all of international law in the exception—not just the international law of expropriation—and that other areas of international law do not shield a sovereign's actions against its own nationals. In support of that assertion, they note that the exception concerns "property *taken* in violation of international law"—not "property *takings* in violation of international law." Tr. of Oral Arg. 70. This distinction between "takings" and "taken," they say, is the difference between incorporating the specifc international law governing takings of property and incorporating international law writ large. *Ibid.*

We would not place so much weight on a gerund. The text of the expropriation exception as a whole supports Germany's reading. In its entirety the clause provides that United States courts may exercise jurisdiction over a foreign sovereign in any case

> "in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States." 28 U. S. C. § 1605(a)(3).

The exception places repeated emphasis on property and property-related rights, while injuries and acts we might associate with genocide are notably lacking. That would be remarkable if the provision were intended to provide relief for atrocities such as the Holocaust. A statutory phrase concerning property rights most sensibly references the international law governing property rights, rather than the law of genocide.

What is more, the heirs' interpretation of the phrase "taken in violation of international law" is not limited to violations of the law of genocide but extends to any human rights abuse. Their construction would arguably force courts themselves to violate international law, not only ignoring the domestic takings rule but also derogating international law's preservation of sovereign immunity for violations of human rights law. As the International Court of Justice recently ruled when considering claims brought by descendants of citizens of Nazi-occupied countries, "a State is not deprived of immunity by reason of the fact that it is accused of serious violations of international human rights law." *Jurisdictional Immunities of the State* (*Germany* v. *Italy*), 2012 I. C. J. 99, 139 (Judgt. of Feb. 3); see also Bradley & Goldsmith, Foreign Sovereign Immunity, Individual Offcia ls, and Human Rights Litigation, 13 Green Bag 2d 9, 21 (2009). Respondents would overturn that rule whenever a violation of international human rights law is accompanied by a taking of property.

Germany's interpretation of the exception is also more consistent with the FSIA's express goal of codifying the restrictive theory of sovereign immunity. § 1602. Under the absolute or classical theory of sovereign immunity, foreign sovereigns are categorically immune from suit. *Altmann*, 541 U. S., at 690. Under the restrictive view, by contrast, immunity extends to a sovereign's public but not its private acts. *Ibid.* Most of the FSIA's exceptions, such as the exception for "commercial activity carried on in the United

States," comport with the overarching framework of the restrictive theory. § 1605(a)(2).

It is true that the expropriation exception, because it permits the exercise of jurisdiction over some public acts of expropriation, goes beyond even the restrictive view. In this way, the exception is unique; no other country has adopted a comparable limitation on sovereign immunity. Restatement (Fourth) of Foreign Relations Law of the United States § 455, Reporters' Note 15 (2017).

History and context explain this nonconformity. As events such as Secretary Hull's letter and the Second Hickenlooper Amendment demonstrate, the United States has long sought to protect the property of its citizens abroad as part of a defense of America's free enterprise system. *Sabbatino*, 376 U. S., at 430.

Given that the FSIA "largely codifes" the restrictive theory, however, we take seriously the Act's general effort to preserve a dichotomy between private and public acts. *Nelson*, 507 U. S., at 359 (internal quotation marks omitted). It would destroy that distinction were we to subject all manner of sovereign public acts to judicial scrutiny under the FSIA by transforming the expropriation exception into an all-purpose jurisdictional hook for adjudicating human rights violations. See *Helmerich*, 581 U. S., at 181 (rejecting the suggestion that Congress intended the expropriation exception to operate as a "radical departure" from the "basic principles" of the restrictive theory).

C

Other provisions of the FSIA confr m Germany's position. The heirs' approach, for example, would circumvent the reticulated boundaries Congress placed in the FSIA with regard to human rights violations. Where Congress did target injuries associated with such acts, including torture or death, it did so explicitly and with precision. The noncommercial tort exception provides jurisdiction over claims

"in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property," but only where the relevant conduct "occurr[ed] in the United States." § 1605(a)(5). Similarly, the terrorism exception eliminates sovereign immunity for state sponsors of terrorism but only for certain human rights claims, brought by certain victims, against certain defendants. §§ 1605A(a), (h).

These restrictions would be of little consequence if human rights abuses could be packaged as violations of property rights and thereby brought within the expropriation exception to sovereign immunity. And there is no reason to suppose Congress thought acts of genocide or other human rights violations to be especially deserving of redress only when accompanied by infringement of property rights. We have previously rejected efforts to insert modern human rights law into FSIA exceptions ill suited to the task. *Nelson*, 507 U. S., at 361 (commercial activity exception does not encompass claims that foreign state illegally detained and tortured United States citizen, "however monstrous such abuse undoubtedly may be"). We do so again today.

We have recognized that "`United States law governs domestically but does not rule the world.'" *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U. S. 108, 115 (2013) (quoting *Microsoft Corp.* v. *AT&T Corp.*, 550 U. S. 437, 454 (2007)). We interpret the FSIA as we do other statutes affecting international relations: to avoid, where possible, "producing friction in our relations with [other] nations and leading some to reciprocate by granting their courts permission to embroil the United States in expensive and diffcu lt litigation." *Helmerich*, 581 U. S., at 183 (internal quotation marks omitted); *RJR Nabisco, Inc.* v. *European Community*, 579 U. S. 325, 335 (2016) (interpreting civil Racketeer Infuenced and Corrupt Organizations Act "to avoid the international discord that can result when U. S. law is applied to conduct in foreign countries"); *Kiobel*, 569 U. S., at 116 (interpreting

Alien Tort Statute so as not to "adopt an interpretation of U. S. law that carries foreign policy consequences not clearly intended by the political branches").

As a Nation, we would be surprised—and might even initiate reciprocal action—if a court in Germany adjudicated claims by Americans that they were entitled to hundreds of millions of dollars because of human rights violations committed by the United States Government years ago. There is no reason to anticipate that Germany's reaction would be any different were American courts to exercise the jurisdiction claimed in this case.

III

The heirs offer several counterarguments, but none can overcome the text, context, and history of the expropriation exception.

First, the heirs rely on the 2016 Foreign Cultural Exchange Jurisdictional Immunity Clarifcati on Act. The Act amends the FSIA to explain that participation in specifed "art exhibition activities" does not qualify as "commercial activity" within the meaning of the expropriation exception. 28 U. S. C. § 1605(h). This clarifcati on responded to decisions of federal courts holding to the contrary, see, *e. g., Malewicz* v. *Amsterdam*, 362 F. Supp. 2d 298, 313–315 (DC 2005), and enables foreign states to loan art to American museums without fear that the work's presence in the United States will subject them to litigation here. The provision, however, does not apply to claims brought against Germany arising out of the period from January 1933 through May 1945. §§ 1605(h)(2), (3). According to the heirs, this clarifcati on of the expropriation exception shows that Congress anticipated Nazi-era claims could be adjudicated by way of that exception.

We agree with the heirs, but only to a limited extent. Claims concerning Nazi-era art takings could be brought under the expropriation exception where the claims involve the taking of a *foreign* national's property. See, *e. g.*, *Alt-*

mann, 541 U. S., at 680–682 (claim concerning Austrian taking of Czechoslovakian national's art brought under the expropriation exception). As for the heirs' suggestion that the Clarifcati on Act demonstrates that Congress meant to abrogate immunity for any Nazi-era claim, however, we do not interpret Congress's effort to *preserve* sovereign immunity in a narrow, particularized context—art shows—as supporting the broad *elimination* of sovereign immunity across all areas of law. The Clarifcati on Act did not purport to amend the critical phrase here—"taken in violation of international law"—and we will not construe it to do so.

The heirs also rely on other statutes aimed at promoting restitution to the victims of the Holocaust. The Acts include the Holocaust Victims Redress Act of 1998, 112 Stat. 15; the Holocaust Expropriated Art Recovery Act of 2016 (HEAR Act), 130 Stat. 1524; and the Justice for Uncompensated Survivors Today (JUST) Act of 2017, Pub. L. 115–171, 132 Stat. 1288. These laws, the heirs suggest, demonstrate Congress's desire for American courts to hear disputes about Holocaust-era property claims.

The statutes do promote restitution for the victims of the Holocaust, but they generally encourage redressing those injuries outside of public court systems. The HEAR Act, for example, states that "the use of alternative dispute resolution" mechanisms will "yield just and fair resolutions in a more effcient and predictable manner" than litigation in court. §2(8), 130 Stat. 1525. Germany has adopted just such an alternative mechanism, the Advisory Commission, and the heirs availed themselves of that opportunity to resolve their claims. *Ibid.* See also Brief for Petitioners 5 ("[T]he German government has provided roughly $100 billion (in today's dollars) to compensate Holocaust survivors and other victims of the Nazi era.").

These laws do not speak to sovereign immunity. That is the province of the FSIA, which provides the carefully constructed framework necessary for addressing an issue of

such international concern. The heirs have not shown that the FSIA allows them to bring their claims against Germany. We cannot permit them to bypass its design.

IV

We hold that the phrase "rights in property taken in violation of international law," as used in the FSIA's expropriation exception, refers to violations of the international law of expropriation and thereby incorporates the domestic takings rule.

We do not address Germany's argument that the District Court was obligated to abstain from deciding the case on international comity grounds. Nor do we consider an alternative argument noted by the heirs: that the sale of the Welfenschatz is not subject to the domestic takings rule because the consortium members were not German nationals at the time of the transaction. See Brief for Respondents 27–28; but see Brief for Petitioners 19, n. 7 (claiming that the heirs forfeited this argument). The Court of Appeals should direct the District Court to consider this argument, including whether it was adequately preserved below.

The judgment of the Court of Appeals for the D. C. Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

SALINAS *v.* UNITED STATES RAILROAD RETIREMENT BOARD

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

No. 19–199. Argued November 2, 2020—Decided February 3, 2021

In 1992, petitioner Manfredo M. Salinas began seeking disability benefts under the Railroad Retirement Act of 1974 (RRA) based on serious injuries he suffered during his 15-year career with the Union Pacifc Railroad. Salinas' frst three applications were denied, but he was granted benefts after he f led his fourth application in 2013. He timely sought reconsideration of the amount and start date of his benefts. After reconsideration was denied, he f led an administrative appeal, arguing that his third application, f led in 2006, should be reopened because the U. S. Railroad Retirement Board (Board) had not considered certain medical records. An intermediary of the Board denied the request to reopen because it was not made "[w]ithin four years" of the 2006 decision, and the Board affr med. 20 CFR § 261.2(b). Salinas sought review with the Fifth Circuit, but the court dismissed the petition for lack of jurisdiction, holding that federal courts cannot review the Board's refusal to reopen a prior benefts determination.

Held: The Board's refusal to reopen a prior benefts determination is subject to judicial review. Pp. 193–202.

(a) The RRA makes judicial review available to the same extent that review is available under the Railroad Unemployment Insurance Act (RUIA). See 45 U. S. C. § 231g. Thus, to qualify for judicial review, the Board's refusal to reopen Salinas' 2006 application must constitute "any f nal decision of the Board." § 355(f). It does. Pp. 193–199.

(1) The phrase "any f nal decision" "denotes some kind of terminal event," and similar language in the Administrative Procedure Act has been interpreted to refer to an agency action that "both (1) mark[s] the consummation of the agency's decisionmaking process and (2) is one by which rights or obligations have been determined, or from which legal consequences will fow." *Smith* v. *Berryhill*, 587 U. S. 471, 479, 481. The Board's refusal to reopen Salinas' 2006 denial of benefts satisfes these criteria. First, the decision was the "terminal event" in the Board's administrative review process. After appealing the intermediary's denial of reopening to the Board, Salinas' only recourse was to seek judicial review. Second, the features of a reopening decision make it one "by which rights or obligations have been determined, or from

which legal consequences will fow." *Id.*, at 481. For example, a reopening is def ned as "a conscious determination . . . to reconsider an otherwise f nal decision for purposes of revising that decision." 20 CFR §261.1(c). It therefore entails substantive changes that affect benefts and obligations under the RRA. The Board reads §355(f)'s earlier reference to "any other party aggrieved by a f nal decision under subsection (c)" to mean that each authorized party may seek review of only "a f nal decision under" §355(c). Section 355(f), however, uses the broad phrase "any f nal decision" without tying it to the earlier reference to §355(c)—a notable omission, since Congress used such limiting language elsewhere in §355, see §355(c)(5). Pp. 194–197.

(2) Any ambiguity in the meaning of "any f nal decision" must be resolved in Salinas' favor under the "strong presumption favoring judicial review of administrative action." *Mach Mining, LLC* v. *EEOC*, 575 U. S. 480, 486. The Board attempts to rebut that presumption by arguing that various cross-references within §355 prove that §355(f) and §355(c) are coextensive. There are several indications, however, that §355(f) is broader than §355(c). For example, under §355(g), determinations that certain unexpended funds may be used to pay benefts or refunds are subject to review exclusively under §355(f), yet the Board concedes that such decisions fall outside §355(c). Pp. 197–199.

(b) The Board's remaining arguments also fall short. First, the Board analogizes §355(f) to the judicial-review provision addressed in *Califano* v. *Sanders*, 430 U. S. 99. But the latter provision contains an express limitation that §355(f) does not, distinguishing *Califano* from this case. Second, the Board argues that reopening does not qualify for judicial review because it is simply a "refusal to make a new determination" of rights or liabilities, like the denial of reopening in *Your Home Visiting Nurse Services, Inc.* v. *Shalala*, 525 U. S. 449, 453. The statute in *Your Home*, however, did not implicate the presumption in favor of judicial review and was narrower than §231g, which simply incorporates §355(f) into the RRA. Finally, the fact that the Board could decline to offer reopening does not mean that, having chosen to provide it, the Board may avoid the plain text of §355(f). The Board's decision to grant or deny reopening is ultimately discretionary, however, and therefore subject to reversal only for abuse of discretion. See 20 CFR §261.11. Pp. 199–202.

765 Fed. Appx. 79, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., BREYER, KAGAN, and KAVANAUGH, JJ., joined. THOMAS, J., f led a dissenting opinion, in which ALITO, GORSUCH, and BARRETT, JJ., joined, *post*, p. 202.

Sarah M. Harris argued the cause for petitioner. With her on the briefs were *Lisa S. Blatt* and *Charles L. McCloud.*

Austin L. Raynor argued the cause for respondent. With him on the brief were *Solicitor General Francisco, Deputy Solicitor General Kneedler, Assistant Attorney General Hunt, Charles W. Scarborough,* and *Sonia M. Carson.*

JUSTICE SOTOMAYOR delivered the opinion of the Court.

The Railroad Retirement Act of 1974 (RRA), 50 Stat. 307, as restated and amended, 45 U. S. C. § 231 *et seq.*, establishes a system of disability, retirement, and survivor benefits for railroad employees. That system is administered by the U. S. Railroad Retirement Board (Board). The Board denied benefits to petitioner Manfredo M. Salinas, a former railroad employee, when he applied in 2006, but it later granted him benefits when he reapplied in 2013. Salinas then requested that the Board reopen its decision to deny his 2006 application, but the Board declined. This case asks whether the Board's refusal to reopen the prior denial of benefits is subject to judicial review. The Court holds that it is.

I

A

The RRA provides long-term benefits to railroad employees who have accrued enough years of service and who have either reached a certain age or become disabled. See 45 U. S. C. §§ 231a(a)(1), (b). It also provides benefits for eligible employees' spouses and survivors under certain conditions. §§ 231a(c)–(d). These benefits complement those provided by another statute, the Railroad Unemployment Insurance Act (RUIA), 52 Stat. 1094, 45 U. S. C. § 351 *et seq.*, which covers short-term periods of unemployment and sickness. See § 352. This case concerns benefits under the RRA only. Both statutes, however, are relevant, as discussed below.

To administer benefts under the RRA, the Board has implemented a multistep system of administrative review. First, an individual applies for benefts and receives an initial decision from the appropriate division of the Board, such as the Disability Benefts Division. 20 CFR §260.1(a) (2020). If the individual is dissatisfed, she may seek reconsideration from the Board's Reconsideration Section. §260.3(a). If denied again, she may appeal to the Board's Bureau of Hearings and Appeals (Bureau). §260.5(a). Lastly, the applicant may take a f nal appeal to the Board itself. §260.9(a).

This four-step sequence is the primary form of administrative review for benefts determinations. Applicants have a right to seek each of the above levels of review within 60 days. See, *e. g.*, 45 U. S. C. §231f(b)(3); 20 CFR §260.9(b). Once an applicant completes the review process, or the deadline for seeking further review passes, the benefts determination becomes "f nal" under the Board's regulations. See 20 CFR §261.1(b).

After a determination becomes f nal, an applicant can request that the Board reopen it. See §261.1(a). "Reopening . . . means a conscious determination on the part of the agency to reconsider an otherwise f nal decision for purposes of revising that decision." §261.1(c) (emphasis deleted). Whether to grant reopening is ultimately discretionary. See §261.11. The Board, however, has established substantive criteria to guide its discretion. For example, as relevant here, a decision may be reopened "[w]ithin four years of the date of the notice of such decision, if there is new and material evidence." §261.2(b).

B

Salinas is a former carpenter and assistant foreman for the Union Pacifc Railroad. During his 15-year railroad career, he suffered two serious injuries on the job. In 1989, a coworker dropped a sledge hammer from an overhead bridge, hitting Salinas on the top of his hardhat. Then, in 1993, a

wooden railroad tie fell from a truck and struck Salinas in the head. As a result, Salinas underwent two spinal fusion surgeries. After receiving treatment, Salinas continued to experience pain, anxiety, and depression. He began seeking RRA disability benefts in 1992. His frst two applications were denied, and he did not seek reconsideration of either.

On February 28, 2006, Salinas fled his third application for RRA benefts. The Board denied Salinas' application on August 28, 2006, concluding that his impairments were not severe enough to qualify for relief. After missing the deadline for seeking reconsideration, Salinas sent a letter to the Board requesting that it reconsider its decision "even though the 60 days had passed." Record 207. Salinas noted, among other things, that he had "more medical records to provide." *Ibid.* The Reconsideration Section denied Salinas' request, fnding that he had failed to demonstrate good cause for his late fling. See 20 CFR §260.3(c). Salinas did not appeal.

Seven years later, on December 26, 2013, Salinas fled his fourth application for RRA benefts. This time, his application was granted. Although Salinas was deemed disabled as of October 9, 2010, his benefts began on December 1, 2012, 12 months prior to the date on which he fled his successful application. Under the RRA, disability benefts begin on the latest of several alternative start dates, and Salinas' application-based start date was later than his disability onset date. See Record 8; 45 U. S. C. §231d(a)(ii); 20 CFR §218.9(c).

Salinas timely sought reconsideration of the amount and start date of his benefts. The Reconsideration Section denied relief, and Salinas appealed to the Bureau. On appeal, Salinas argued that his 2006 application should be reopened because the Board had not considered certain medical records in existence at the time when it denied him benefts. Salinas submitted the records as part of his appeal.

On August 26, 2016, the Bureau denied Salinas' request to reopen the 2006 decision. The Bureau concluded that Salinas had failed to seek reopening based on "new and material evidence" within four years of the decision at issue, as required by regulation. 20 CFR § 261.2(b). Salinas appealed to the Board, which affirmed the Bureau's decision on the ground that Salinas had not met the criteria for reopening under § 261.2. The Board notifed Salinas that he could seek judicial review of the Board's decision within one year.

Salinas filed a timely *pro se* petition for review with the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit dismissed the petition for lack of jurisdiction. 765 Fed. Appx. 79, 80–81 (2019) (*per curiam*). In a previous decision, the Fifth Circuit had joined the majority of Circuits in holding that federal courts cannot review the Board's refusal to reopen a prior benefts determination. See *Roberts* v. *Railroad Retirement Bd.*, 346 F. 3d 139, 141 (2003). The Fifth Circuit noted a longstanding split among the Circuits on this issue. 765 Fed. Appx., at 80–81 (citing cases).

We granted certiorari to resolve the conflict among the Courts of Appeals. 589 U. S. 1127 (2020).

II

Section 231g of the RRA provides that, except for the deadline for seeking review, "[d]ecisions of the Board determining the rights or liabilities of any person" under the RRA "shall be subject to judicial review in the same manner, subject to the same limitations, and all provisions of law shall apply in the same manner as though the decision were a determination of corresponding rights or liabilities under the Railroad Unemployment Insurance Act." 45 U. S. C. § 231g. In other words, § 231g makes judicial review available under the RRA to the same extent that review is available under

the RUIA.[1] This case, therefore, turns on the RUIA's judicial review provision, 45 U. S. C. § 355(f).

Section 355(f) provides: "Any claimant, or any railway labor organization organized in accordance with the provisions of the Railway Labor Act . . . , of which claimant is a member, or any base-year employer of the claimant, or any other party aggrieved by a final decision under subsection (c) of this section, may . . . obtain a review of any final decision of the Board."[2] To qualify for judicial review under this provision, the Board's refusal to reopen its denial of Salinas' 2006 application must constitute "any final decision of the Board." It does.

A

The text of § 355(f) starts our analysis. The phrase "any final decision" is broad, and it reflects Congress' intent to define the scope of review "expansively." *Smith* v. *Berryhill*, 587 U. S. 471, 479 (2019) (internal quotation marks and brackets omitted). The phrase "denotes some kind of terminal event," such as the "final stage of review." *Ibid.*

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[1] Every Court of Appeals to interpret these statutes has reached the same conclusion. See *Stovic* v. *Railroad Retirement Bd.*, 826 F. 3d 500, 502 (CADC 2016) (Kavanaugh, J., for the court); *Cunningham* v. *Railroad Retirement Bd.*, 392 F. 3d 567, 571 (CA3 2004); *Roberts* v. *Railroad Retirement Bd.*, 346 F. 3d 139, 140 (CA5 2003); *Rivera* v. *Railroad Retirement Bd.*, 262 F. 3d 1005, 1008 (CA9 2001); *Harris* v. *Railroad Retirement Bd.*, 198 F. 3d 139, 141 (CA4 1999); *Abbruzzese* v. *Railroad Retirement Bd.*, 63 F. 3d 972, 974, n. 4 (CA10 1995); *Clifford* v. *Railroad Retirement Bd.*, 3 F. 3d 536, 538, n. 4 (CA1 1993); *Linquist* v. *Bowen*, 813 F. 2d 884, 888 (CA8 1987); *Steebe* v. *Railroad Retirement Bd.*, 708 F. 2d 250, 252 (CA7 1983); *Railroad Concrete Crosstie Corp.* v. *Railroad Retirement Bd.*, 709 F. 2d 1404, 1406, n. 2 (CA11 1983); *Szostak* v. *Railroad Retirement Bd.*, 370 F. 2d 253, 254 (CA2 1966) (interpreting § 231g's predecessor provision); accord, Brief for Petitioner 15; Brief for Respondent 12.

[2] "[S]ubsection (c)," *i. e.*, 45 U. S. C. § 355(c), governs administrative review of benefits determinations under the RUIA. It addresses decisions awarding or denying benefits, including "initial determination[s]," as well as decisions about the recovery of improperly awarded benefits. 45 U. S. C. §§ 355(c)(1)–(4).

Similar language in the Administrative Procedure Act has been interpreted to refer to an agency action that "both (1) mark[s] the consummation of the agency's decisionmaking process and (2) is one by which rights or obligations have been determined, or from which legal consequences will fow." *Id.*, at 481 (quoting *Bennett* v. *Spear*, 520 U. S. 154, 177–178 (1997); internal quotation marks omitted).

The Board's refusal to reopen the prior denial of benefts satisfes these criteria. First, the decision was the "terminal event" in the Board's administrative review process. *Smith*, 587 U. S., at 479. After frst requesting reopening before the Bureau, Salinas exhausted further agency review by appealing to the Board itself. Salinas' only recourse thereafter was to seek judicial review.

Second, the Board's decision was one "`by which rights or obligations have been determined, or from which legal consequences will fow.'" *Army Corps of Engineers* v. *Hawkes Co.*, 578 U. S. 590, 597 (2016). The Board has defned reopening as "a conscious determination . . . to reconsider an otherwise fnal decision for purposes of revising that decision." 20 CFR §261.1(c). Reopening therefore entails substantive changes that affect benefts and obligations under the RRA. Consistent with its substantive nature, the decision to grant or deny reopening is guided by objective criteria, including whether "there is new and material evidence or there was adjudicative error not consistent with the evidence of record at the time of adjudication." §261.2(b). If reopening is granted, any revision the Board makes may be reviewed in the same manner as a primary determination of benefts; otherwise, the revision is "binding." §§261.7, 261.8. In light of these features, a decision about reopening fts within the meaning of "any fnal decision" as that phrase is used in §355(f).

The Board disagrees because it interprets the phrase "any fnal decision" to mean "any fnal decision under §355(c)." The Board's argument goes like this: Section 355(f) author-

izes four parties to seek judicial review: (1) a claimant for benefts, (2) a claimant's railway labor organization, (3) a claimant's base-year employer, and (4) "any other party aggrieved by a f nal decision under subsection (c) of this section." 45 U. S. C. § 355(f). The phrase "any other" means that, in order to obtain judicial review, each of the enumerated parties must be "aggrieved by a f nal decision under subsection (c)." This implies, in turn, that each party may seek judicial review of only the decision "under subsection (c)" by which it was aggrieved. A denial of reopening is not a decision "under subsection (c)" because it is not a determination granting or denying benefts. See §§ 355(c)(1)–(4). Thus, the Board argues, reopening decisions are not subject to judicial review.

The Board's interpretation is inconsistent with the text of § 355(f). Congress conspicuously chose the broad language "any f nal decision," without tying that phrase to the earlier reference to "a f nal decision under subsection (c)." This omission is especially notable because Congress used such limiting references elsewhere in § 355. Under § 355(c)(5), Congress established rules for "[f]inal decision[s] of the Board in the cases provided for in the preceding three paragraphs" (in other words, under §§ 355(c)(2)–(4)). 45 U. S. C. § 355(c)(5). In the same paragraph, Congress authorized any properly interested and notifed party to obtain judicial review of "any such decision by which he claims to be aggrieved." *Ibid.* By using the language "such" and "by which he claims to be aggrieved," Congress clearly referred to the particular type of decision described earlier in § 355(c)(5), thus limiting judicial review to f nal decisions "provided for" in §§ 355(c)(2)–(4).

This type of limiting language is absent from § 355(f). "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello*

v. *United States*, 464 U. S. 16, 23 (1983) (internal quotation marks and brackets omitted). Section 355(f) authorizes judicial review of "any" final decision, not "such" final decision "under subsection (c)." The Board's denial of reopening qualifies for review under the language Congress chose.[3]

B

To the extent there is ambiguity in the meaning of "any final decision," it must be resolved in Salinas' favor under the "strong presumption favoring judicial review of administrative action." *Mach Mining, LLC* v. *EEOC*, 575 U. S. 480, 486 (2015) (internal quotation marks omitted). This default rule is "`well-settled,'" and Congress is presumed to legislate with it in mind. *Kucana* v. *Holder*, 558 U. S. 233, 252 (2010). To rebut the presumption, the Board bears a "heavy burden" of showing that the statute's "language or structure" forecloses judicial review. *Mach Mining*, 575 U. S., at 486 (internal quotation marks omitted).

The Board has not met its burden. The Board argues that various cross-references within § 355 indicate that § 355(f) covers only decisions made under § 355(c). For instance, § 355(c)(7) provides for review solely "pursuant to this subsection and subsection (f)." 45 U. S. C. § 355(c)(7); see also § 355(c)(5). Meanwhile, § 355(f) requires that "all administrative remedies within the Board," including review under § 355(c), must be exhausted before a party can seek judicial review. Finally, § 355(g) provides that "[f]indings of fact and conclusions of law of the Board in the determination of

[3] The Court need not resolve the parties' dispute about whether each type of party listed in § 355(f) must be "aggrieved by a final decision under subsection (c)," or whether that phrase modifies only the closest antecedent. Either way, Salinas is a proper party because he qualifies as both a "claimant" and a "claimant . . . aggrieved by a final decision under subsection (c)." Salinas has filed four separate applications for benefits under the RRA, and he claims to have been aggrieved by the Board's decision on each, including the Board's allegedly incorrect assessment of the benefits he is owed based on his 2013 application.

any claim for benefts or refund" and "the determination of any other matter pursuant to subsection (c)" shall be reviewed exclusively under § 355(f). In the Board's view, these cross-references prove that §§ 355(f) and 355(c) are coextensive.

The structure of § 355 shows that § 355(c) feeds exclusively into § 355(f), but nothing in the statute suggests that the exclusivity runs the other way. To the contrary, several clues indicate that § 355(f) encompasses decisions beyond those described in § 355(c). For example, § 355(g) lists three types of decisions that are subject to review exclusively under § 355(f): determinations of claims for benefts or refunds, determinations of other matters under § 355(c), and determinations that unexpended funds in the railroad unemployment insurance account may be used to pay benefts or refunds. See 45 U. S. C. §§ 355(g), 351(p), 360(a). The Board concedes that the third type of decision falls outside § 355(c). See Brief for Respondent 22, n. 4.[4] In addition, the Board's own regulations appear to presume that judicial review is available for decisions not covered by § 355(c), such as the Board's determinations of employers' contribution rates. See 20 CFR § 345.307(c). Given these indications that § 355(f) is broader than § 355(c), the Board's structural argument does not overcome the plain meaning of

[4] The Board argues that § 355(g) merely precludes review of the Board's fund decisions by the Comptroller General, who ordinarily makes determinations related to the charging and settling of government accounts. See Brief for Respondent 22, n. 4. That purpose, however, could have been accomplished without also indicating that review is available "as provided in subsection (f)." 45 U. S. C. § 355(g). Indeed, the RUIA does exactly this with respect to determinations about the use of funds from an administrative expense account. See § 361(c) (providing simply that the Board's determinations "shall not be subject to review in any manner"). Ultimately, we need not resolve whether the Board's fund decisions are subject to judicial review. The point is that the Board's structural interpretation is subject to doubt, and therefore does not overcome the presumption in favor of judicial review.

"any f nal decision" and the presumption in favor of judicial review.

C

The Board's remaining arguments also fall short. First, the Board argues that this Court's precedent holds that reopening decisions are not subject to judicial review. In *Califano* v. *Sanders*, 430 U. S. 99 (1977), this Court concluded that § 405(g) of the Social Security Act, which authorizes judicial review of "`any f nal decision of the Secretary made after a hearing,'" does not apply to refusals to reopen a prior benefts determination. *Id.*, at 102 (quoting 42 U. S. C. § 405(g)). As it is under the RRA, the opportunity to seek reopening in *Califano* was "a second look that the agency had made available to claimants as a matter of grace" after the deadline for appealing an initial benefts determination had passed. *Smith*, 587 U. S., at 485. Given this similarity, many courts have applied *Califano* to the type of decision at issue here. See, *e. g.*, *Roberts*, 346 F. 3d, at 141; *Harris* v. *Railroad Retirement Bd.*, 198 F. 3d 139, 142 (CA4 1999); *Abbruzzese* v. *Railroad Retirement Bd.*, 63 F. 3d 972, 974 (CA10 1995).

A key textual difference in the respective judicial review provisions, however, distinguishes *Califano* from this case. Section 405(g) of the Social Security Act provides that reviewable decisions must be "made after a hearing," whereas § 355(f) of the RRA contains no such limitation. Compare 42 U. S. C. § 405(g) with 45 U. S. C. § 355(f). Section 405(g)'s hearing requirement was a signifcant basis for *Califano*'s conclusion that judicial review was unavailable, as "a petition to reopen a prior f nal decision may be denied without a hearing." 430 U. S., at 108; see also *ibid.* (explaining that § 405(g) "clearly limits judicial review to a particular type of agency action"). The other considerations identifed in *Califano*, including the fact that reopening was made available only by regulation, corroborated the Court's interpretation of this important textual limit. *Ibid.*; see also *Smith*, 587

U. S., at 480–481. Section 355(f), by contrast, contains no such express limitation, and the Board's decision fts within the provision's plain language.

Second, the Board argues that § 355(f) should be interpreted in light of § 231g's reference to decisions "determining the rights or liabilities of any person." See 45 U. S. C. § 231g. The denial of reopening does not qualify for judicial review, the Board claims, because it is simply a "refusal to make a new determination" of rights or liabilities, like the decision this Court addressed in *Your Home Visiting Nurse Services, Inc.* v. *Shalala*, 525 U. S. 449 (1999). *Id.*, at 453 (emphasis deleted). In *Your Home*, this Court concluded that an agency intermediary's refusal to reopen a prior Medicare reimbursement determination was not subject to further administrative review because it was not a "`fnal determination . . . as to the amount of total program reimbursement due.'" *Ibid.* (quoting 42 U. S. C. § 1395*oo*(a)(1)(A)(i)). The agency argued that the denial of reopening was not itself a determination "as to the amount," but rather a refusal to make such a determination. 525 U. S., at 453. This Court concluded that the agency's interpretation was reasonable, and thus entitled to deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). *Your Home*, 525 U. S., at 453. The Court noted that the agency's interpretation was also "the more natural" reading of the statute and was "further confr med" by two considerations from *Califano*: The right to seek reopening existed only by regulation, and permitting review would undermine the ordinary deadlines for appealing the intermediary's reimbursement decisions. 525 U. S., at 453–454. The Board argues that its decision here should be viewed in the same way.

The Board's argument is unpersuasive for several reasons. First, the statute in *Your Home* def ned the scope of internal agency review and thus did not implicate the presumption in favor of judicial review. To the contrary, the Court ulti-

mately deferred to the agency's interpretation precluding review under *Chevron*. See 525 U. S., at 453. No such deference is due here because the scope of judicial review is "hardly the kind of question that the Court presumes that Congress implicitly delegated to an agency." *Smith*, 587 U. S., at 486.

Second, the statute at issue in *Your Home* was narrower than § 231g because it focused on a particular type of determination: one "as to the amount of total program reimbursement due the provider." See 42 U. S. C. § 1395*oo*(a)(1)(A)(i). Section 231g, in contrast, broadly authorizes judicial review of "[d]ecisions . . . determining the rights or liabilities of any person under [the RRA]." This broader language, as well as § 231g's express direction that "all provisions of law shall apply in the same manner as though the decision were a determination of corresponding rights or liabilities under the [RUIA]," indicates that § 231g simply incorporates § 355(f) into the RRA. As the Board stated during oral argument, § 231g "effectively piggybacks" on § 355(f). Tr. of Oral Arg. 46. Every Court of Appeals to interpret these statutes has reached the same conclusion. See *supra*, at 194, n. 1. Thus, the key language governing judicial review under both statutes is the phrase "any f nal decision."

Finally, the Board argues that the opportunity to seek reopening is a matter of administrative grace, and such solicitous discretion should not be discouraged by allowing judicial review. But the fact that the Board could decline to offer reopening does not mean that, having chosen to provide it, the Board may avoid the plain text of § 355(f). See *Hawkes Co.*, 578 U. S., at 602 ("[S]uch a `count your blessings' argument is not an adequate rejoinder to the assertion of a right to judicial review"). Whether the availability of judicial review will affect how the Board exercises its discretion is a question properly reserved for Congress.

It is also worth noting that judicial review of reopening decisions will be limited. The Board's decision to grant or

deny reopening, while guided by substantive criteria, is ultimately discretionary and therefore subject to reversal only for abuse of discretion. See 20 CFR §261.11; *Stovic*, 826 F. 3d, at 506; *Szostak* v. *Railroad Retirement Bd.*, 370 F. 2d 253, 254 (CA2 1966) (Friendly, J., for the court). Most decisions will be upheld under this deferential standard. See *ICC* v. *Locomotive Engineers*, 482 U. S. 270, 288 (1987) (Stevens, J., concurring). Judicial review plays a modest, but important, role in guarding against decisions that are arbitrary, inconsistent with the standards set by the Board's own regulations, or otherwise contrary to law.

* * *

We hold that the Board's refusal to reopen a prior benefts determination is a "f nal decision" within the meaning of §355(f), and therefore subject to judicial review. The judgment of the United States Court of Appeals for the Fifth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE ALITO, JUSTICE GORSUCH and JUSTICE BARRETT join, dissenting.

The Court may well correctly interpret the judicial review provision located in the Railroad Unemployment Insurance Act (RUIA). See 45 U. S. C. §355(f). But this case concerns the judicial review provision located in the Railroad Retirement Act (RRA). See 45 U. S. C. §231g. And though the RRA references the RUIA to explain *how* to obtain judicial review, it def nes separately *what* may be reviewed—the key issue here.

The RRA provides that "[d]ecisions of the Board determining the rights or liabilities of any person under this subchapter shall be subject to judicial review in the same manner, subject to the same limitations, and all provisions of law shall apply in the same manner as though the decision were

a determination of corresponding rights or liabilities under the [RUIA]." *Ibid.* This language directs courts to assess questions about reviewability in three steps. First, resolve whether the Board's decision determined rights or liabilities. Second, locate the rights or liabilities under the RUIA, if any, that correspond to the ones determined by the Board. And third, decide whether and how a determination of those parallel rights or liabilities would be reviewed under the RUIA.

The majority bypasses this structure entirely by overlooking the question whether the Board's decision here determined any right or liability at all. It did not. A "right" is "[a] power, privilege, or immunity guaranteed under a constitution, statutes or decisional laws, or claimed as a result of long usage." Black's Law Dictionary 1189 (5th ed. 1979). Similarly, a "liability" is "an obligation one is bound in law or justice to perform." *Id.*, at 823. The Board here did not assess a legal obligation or claim. As the majority points out, the Board decided only the "ultimately discretionary" matter of whether to reopen the 2006 decision. *Ante*, at 202. Neither the RRA nor the RUIA provides any statutory right to reopen a proceeding. And the regulations that create reopening procedures make clear that no one has a right to that proceeding; the Board has plenary authority to "direct that any decision, which is otherwise subject to reopening under this part, shall not be reopened." 20 CFR §261.11 (2020).

Nor did the Board's decision determine any underlying statutory entitlement to benefts, as petitioner contends. The most recent reopening decision did not address the merits of the 2006 decision. On the contrary, it briefy explained that petitioner failed to meet any of the threshold regulatory requirements to obtain a reopening in the frst place. As we unanimously said in a similar context, the "more natural" understanding of a reopening denial like this one is that it was simply "the *refusal* to make a new determination."

Your Home Visiting Nurse Services, Inc. v. *Shalala*, 525 U. S. 449, 453 (1999).

The majority skirts this analysis by noting that the statute at issue in *Your Home* was narrower than the RRA. In *Your Home*, the statute involved determinations of "program reimbursement" amounts, 42 U. S. C. § 1395*oo*(a)(1)(A)(i), whereas the statute here provides review for determinations of "rights or liabilities," 45 U. S. C. § 231g. But that distinction is irrelevant. The reasoning in *Your Home* was simply that the refusal to reopen a determination "is not a final determination . . . but rather the *refusal* to make a new determination." 525 U. S., at 453 (internal quotation marks omitted). So too here.[1]

The majority also tries to sidestep text and precedent by invoking the presumption in favor of judicial review of administrative action that this Court sometimes applies. But we have explained that this presumption is nothing more than a default rule that gives way to "a statute's language or structure." *Mach Mining, LLC* v. *EEOC*, 575 U. S. 480, 486 (2015); see also *Block* v. *Community Nutrition Institute*, 467 U. S. 340, 351 (1984) (explaining that the presumption is "overcome. . . whenever the congressional intent to preclude judicial review is fairly discernible in the statutory scheme" (internal quotation marks omitted)). Here, § 231g limits judicial review to Board decisions determining rights or liabilities. The statutory language alone controls the outcome.

Any presumption is further undercut because petitioner had full opportunity to seek judicial review of the 2006 decision that did determine his rights. Congress gave petitioner 90 days to file a petition for review in a court of appeals. § 355(f). Petitioner simply did not take advantage of it. To require a court to review a reopening denial now—15 years after the statutory time for review expired—

[1] That the Court noted the best reading of the statute also happened to be a reasonable one under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), does not undermine its logic.

transforms a default presumption into a tool to "frustrate the statutory purpose of imposing a [time] limit on judicial review." *Your Home*, 525 U. S., at 454. The presumption of judicial review is not a presumption of inf nite judicial review. See *Califano* v. *Sanders*, 430 U. S. 99, 108 (1977) (rejecting "an interpretation that would allow a claimant judicial review simply by f ling—and being denied—a petition to reopen his claim"). We should not so readily allow a court-created presumption to overcome statutory time limits.

The majority opinion is doubly incorrect because it creates a new form of judicial review in a context where it is not clear how it can be exercised. What standards a court could use to review Board decisions denying reopening remain elusive. There are no statutory cues to guide review—indeed, it is not altogether clear that the Board has authority to reopen its f nal decisions. See 45 U. S. C. § 355(g). And the regulations that provide review give the Board discretion to deny reopening whenever it "deem[s] proper," even if a case "is otherwise subject to reopening. 20 CFR § 261.11. The "impossibility of devising an adequate standard of review" for these sorts of decisions is yet another reason to conclude that no review is warranted. *ICC* v. *Locomotive Engineers*, 482 U. S. 270, 282 (1987); cf. 5 U. S. C. § 701(a)(2) (extending judicial review, "except to the extent that . . . agency action is committed to agency discretion by law").[2] Were courts to try to impose standards governing when the Board can deny reopening, the unintended effect may be to discourage the Board from offering reopenings in the frst place. I would not distort the RRA's judicial review provision to force courts to review a decision where no standards of review are evident.

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[2] Our precedent suggests that even if judicial review is generally precluded, it may still remain available for "the adjudication of colorable constitutional claims." *Califano* v. *Sanders*, 430 U. S. 99, 109 (1977). But we need not decide whether this exception applies because neither side contends that the Board decided such an issue below.

Instead of reckoning with these serious questions, the majority interprets §231g to say nothing more than that the RUIA's judicial review provision applies. *Ante*, at 193–194. But that interpretive gloss ignores the words Congress chose. Only Board decisions "determining the rights or liabilities of any person" under the RRA are subject to judicial review. 45 U. S. C. §231g. Because the Board's decision below did not determine any right or liability, the RRA does not provide for judicial review. I respectfully dissent.

Syllabus

REPUBLIC OF HUNGARY ET AL. *v.* SIMON ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18–1447. Argued December 7, 2020—Decided February 3, 2021

911 F. 3d 1172, vacated and remanded.

Gregory Silbert argued the cause for petitioners. With him on the briefs was *Konrad L. Cailteux.*

Benjamin W. Snyder argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Acting Solicitor General Wall, Deputy Solicitor General Kneedler, Sopan Joshi, Sharon Swingle,* and *Joshua K. Handell.*

Sarah E. Harrington argued the cause for respondents. With her on the brief were *Erica Oleszczuk Evans, Paul G. Gaston, Charles S. Fax, Liesel J. Schopler, L. Marc Zell,* and *David H. Weinstein.**

**John B. Bellinger III, Sally L. Pei,* and *R. Reeves Anderson* filed a brief for Société Nationale SNCF SA as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the American Association of Jewish Lawyers and Jurists et al. by *Arthur R. Traldi* and *Stephen R. Greenwald*; for the Holocaust Survivors Foundation USA, Inc., et al. by *Samuel J. Dubbin*; for Members of the United States House of Representatives by *Akiva Shapiro*; for the Raoul Wallenberg Centre for Human Rights et al. by *Beth Heifetz* and *Alex Potapov*; for Victims of the Hungarian Holocaust by *Robert James Pavich* and *Richard H. Weisberg*; for the World Jewish Congress et al. by *Thomas R. Kline* and *L. Eden Burgess*; and for Mark B. Feldman by *Mark B. Feldman, pro se.*

Briefs of *amici curiae* were filed for The 1939 Society et al. by *Benjamin G. Shatz, Stanley A. Goldman,* and *Stanley W. Levy*; for William S. Dodge et al. by *Geoffrey M. Klineberg* and *Daniel S. Severson*; and for Samuel Estreicher et al. by *Amelia L. B. Sargent.*

PER CURIAM.

The judgment of the United States Court of Appeals for the D. C. Circuit is vacated, and the case is remanded for further proceedings consistent with the decision in *Federal Republic of Germany* v. *Philipp*, 592 U. S. 169 (2021).

It is so ordered.

Reporter's Note

The next page is purposely numbered 901. The numbers between 208 and 901 were intentionally omitted, in order to make it possible to publish the orders with *permanent* page numbers, thus making the offcia l citations available upon publication of the preliminary prints of the United States Reports.

ORDERS FOR OCTOBER 5, 2020, THROUGH
FEBRUARY 22, 2021

OCTOBER 5, 2020

Certiorari Granted—Vacated and Remanded

No. 19–1046. PHAM, SENIOR OFFICIAL PERFORMING THE DUTIES OF THE DIRECTOR OF U. S. IMMIGRATION AND CUSTOMS ENFORCEMENT, ET AL. *v.* RAGBIR ET AL. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Department of Homeland Security* v. *Thuraissigiam*, 591 U. S. 103 (2020). Reported below: 923 F. 3d 53.

No. 19–8126. WILSON *v.* OKLAHOMA. Ct. Crim. App. Okla. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McGirt* v. *Oklahoma*, 591 U. S. 894 (2020).

No. 19–8149. LAMBERT *v.* LOUISIANA. Ct. App. La., 4th Cir. Reported below: 2018–0777 (La. App. 4 Cir. 3/27/19), 267 So. 3d 648;

No. 19–8337. RUFFIN *v.* LOUISIANA. Ct. App. La., 1st Cir. Reported below: 2018–1280 (La. App. 1 Cir. 2/28/19); and;

No. 19–8338. MAYEUX *v.* LOUISIANA. Sup. Ct. La. Reported below: 2019–00369 (La. 1/29/20). Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Ramos* v. *Louisiana*, 590 U. S. 83 (2020).

No. 20–5091. HORTON *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Davis* v. *United States*, 589 U. S. 345 (2020) (*per curiam*). Reported below: 950 F. 3d 237.

Certiorari Dismissed

No. 19–8383. SORO *v.* LOPEZ. Dist. Ct. App. Fla., 3d Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 19–8450. CARMELL *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 19–8480. CATERBONE *v.* NATIONAL SECURITY AGENCY. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). Reported below: 786 Fed. Appx. 351.

No. 19–8531. HALL *v.* INCH ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

No. 19–8534. JOHNSON *v.* PERFORMANT RECOVERY, INC., ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 19–8610. SANCHO *v.* EBNER FAMILY TRUST. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 19–8671. ARUNACHALAM *v.* WELLS FARGO BANK, N. A. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submit-

ted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). THE CHIEF JUSTICE took no part in the consideration or decision of this motion and this petition.

No. 19–8707. ARUNACHALAM *v.* APPLE, INC., ET AL. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). THE CHIEF JUSTICE took no part in the consideration or decision of this motion and this petition. Reported below: 806 Fed. Appx. 977.

No. 19–8708. ARUNACHALAM *v.* PRESIDIO BANK. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). THE CHIEF JUSTICE took no part in the consideration or decision of this motion and this petition. Reported below: 801 Fed. Appx. 750.

No. 19–8750. ARUNACHALAM *v.* SAP AMERICA, INC. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). THE CHIEF JUSTICE took no part in the consideration or decision of this motion and this petition. Reported below: 801 Fed. Appx. 750.

No. 19–8753. BANKS *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA. C. A. 3d Cir. Mo-

tion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). Reported below: 800 Fed. Appx. 135.

No. 19–8780. GLICK *v.* GUIFFRIDA. Sup. Ct. Mont. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 398 Mont. 446, 455 P. 3d 456.

No. 19–8797. SHOVE *v.* MCDONALD ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 792 Fed. Appx. 555.

No. 20–5118. DONAHUE *v.* PENNSYLVANIA. Super. Ct. Pa. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 20–5124. CALTON *v.* TEXAS. Ct. Crim. App. Tex. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 20–5126. DAY *v.* WATSON, WARDEN. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). Reported below: 798 Fed. Appx. 27.

No. 20–5138. MCCOLM *v.* CALIFORNIA ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 20–5198. SMITH *v.* MAYFIELD ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals,* 506 U. S. 1 (1992) (*per curiam*).

No. 20–5209. CLARK *v.* FYE ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 20–5229. LOPEZ *v.* COSTA MESA POLICE DEPARTMENT ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals,* 506 U. S. 1 (1992) (*per curiam*). Reported below: 792 Fed. Appx. 522.

No. 20–5230. LOPEZ *v.* NEWPORT BEACH POLICE DEPARTMENT ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals,* 506 U. S. 1 (1992) (*per curiam*). Reported below: 792 Fed. Appx. 535.

No. 20–5275. MANUEL TORRES *v.* TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 20–5311. HOLLIHAN *v.* PENNSYLVANIA. Sup. Ct. Pa. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. JUS-

TICE ALITO took no part in the consideration or decision of this motion and this petition.

No. 20–5336. JONES *v.* BRUMBLEY. Sup. Ct. Del. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 234 A. 3d 1159.

No. 20–5475. CABELLO, AKA PALUMBO *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 20A55. ANDINO ET AL. *v.* MIDDLETON ET AL. D. C. S. C. Application for stay, presented to THE CHIEF JUSTICE, and by him referred to the Court, granted in part, and the District Court's September 18, 2020, order granting preliminary injunction is stayed pending disposition of the appeal in the United States Court of Appeals for the Fourth Circuit and disposition of the petition for writ of certiorari, if such writ is timely sought. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court. The order is stayed except to the extent that any ballots cast before this stay issues and received within two days of this order may not be rejected for failing to comply with the witness requirement. JUSTICE THOMAS, JUSTICE ALITO, and JUSTICE GORSUCH would grant the application in full.

JUSTICE KAVANAUGH, concurring.

The District Court enjoined South Carolina's witness requirement for absentee ballots because the court disagreed with the State's decision to retain that requirement during the COVID–19 pandemic. For two alternative and independent reasons, I agree with this Court's order staying in part the District Court's injunction.

First, the Constitution "principally entrusts the safety and the health of the people to the politically accountable offcia ls of the States." *South Bay United Pentecostal Church* v. *Newsom*, 590

U. S. 965, 967 (2020) (ROBERTS, C. J., concurring in denial of application for injunctive relief) (internal quotation marks and alteration omitted). "When those offcia ls `undertake[ ] to act in areas fraught with medical and scientifc uncertainties,' their latitude `must be especially broad.'" *Ibid.* (quoting *Marshall* v. *United States*, 414 U. S. 417, 427 (1974); alteration in original). It follows that a State legislature's decision either to keep or to make changes to election rules to address COVID–19 ordinarily "should not be subject to second-guessing by an `unelected federal judiciary,' which lacks the background, competence, and expertise to assess public health and is not accountable to the people." *South Bay*, 590 U. S., at 967 (citing *Garcia* v. *San Antonio Metropolitan Transit Authority*, 469 U. S. 528, 545 (1985)). The District Court's injunction contravened that principle.

Second, for many years, this Court has repeatedly emphasized that federal courts ordinarily should not alter state election rules in the period close to an election. See *Purcell* v. *Gonzalez*, 549 U. S. 1 (2006) (*per curiam*). By enjoining South Carolina's witness requirement shortly before the election, the District Court defed that principle and this Court's precedents. See 990 F. 3d 768, 771–774 (CA4 2020) (Wilkinson and Agee, JJ., dissenting from denial of stay).

For those two alternative and independent reasons, I agree with this Court's order staying in part the District Court's injunction.

No. 20M1. THOMPSON *v.* CATTAIL CREEK COMMUNITY ASSN.;
No. 20M6. VICKERY *v.* HALL, WARDEN, ET AL.;
No. 20M8. SAFFORD *v.* FLORIDA;
No. 20M9. LAN TU TRINH *v.* DEPARTMENT OF EDUCATION;
No. 20M10. LAN TU TRINH *v.* FINEMAN;
No. 20M13. RITH *v.* UNITED STATES;
No. 20M14. ELLIS *v.* UNITED STATES;
No. 20M15. CESSPOOCH *v.* UNITED STATES;
No. 20M18. KELLEY *v.* HERRERA ET AL.;
No. 20M19. LOPEZ *v.* UNITED STATES;
No. 20M21. GOODWINE *v.* AMTRAK;
No. 20M22. WASHINGTON *v.* BONDS, ADMINISTRATOR, SOUTH WOODS STATE PRISON, ET AL.; and
No. 20M24. SHERER *v.* UNITED STATES. Motions to direct the Clerk to f le petitions for writs of certiorari out of time denied.

No. 20M3. HENNING *v.* UNITED STATES;
No. 20M7. CONERLY *v.* UNITED STATES;
No. 20M11. S. O. ET AL. *v.* DISTRICT OF COLUMBIA;
No. 20M12. JACKSON *v.* UNITED STATES;
No. 20M17. HENRY *v.* UNITED STATES; and
No. 20M23. JENKINS *v.* O'ROURKE ET AL. Motions for leave to file petitions for writs of certiorari with supplemental appendixes under seal granted.

No. 20M4. WHITEHEAD *v.* NETFLIX, INC., ET AL.; and
No. 20M5. ALBRITTON *v.* BRNOVICH, ATTORNEY GENERAL OF ARIZONA, ET AL. Motions for leave to proceed as veterans denied.

No. 20M16. M. S. *v.* HOON ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 20M20. DAVIS *v.* CALIFORNIA. Motion of petitioner for leave to proceed *in forma pauperis* with declaration of indigency under seal denied.

No. 142, Orig. FLORIDA *v.* GEORGIA. Exceptions to the Second Report of the Special Master are set for oral argument in due course. [For earlier order herein, see, *e. g.*, 589 U. S. 1177.]

No. 152, Orig. MONTANA ET AL. *v.* WASHINGTON. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 18–1259. JONES *v.* MISSISSIPPI. Sup. Ct. Miss. Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 19–123. FULTON ET AL. *v.* CITY OF PHILADELPHIA, PENNSYLVANIA, ET AL. C. A. 3d Cir. Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of respondents for divided argument granted.

No. 19–508. AMG CAPITAL MANAGEMENT, LLC, ET AL. *v.* FEDERAL TRADE COMMISSION. C. A. 9th Cir.; and
No. 19–825. FEDERAL TRADE COMMISSION *v.* CREDIT BUREAU CENTER, LLC, ET AL. C. A. 7th Cir. [Certiorari granted, 591 U. S. 1028.] Motion to dispense with printing joint appendix granted.

No. 19–897. PHAM, SENIOR OFFICIAL PERFORMING THE DUTIES OF THE DIRECTOR OF U. S. IMMIGRATION AND CUSTOMS ENFORCEMENT, ET AL. *v.* GUZMAN CHAVEZ ET AL. C. A. 4th Cir. [Certiorari granted *sub nom. Albence* v. *Guzman Chavez*, 590 U. S. 991.] Motion of petitioners to dispense with printing joint appendix granted.

No. 19–963. HENRY SCHEIN, INC. *v.* ARCHER & WHITE SALES, INC. C. A. 5th Cir. [Certiorari granted, 590 U. S. 991.] Motion of petitioner for leave to file joint appendix under seal with redacted copies for the public record granted.

No. 19–1328. DEPARTMENT OF JUSTICE *v.* HOUSE COMMITTEE ON THE JUDICIARY. C. A. D. C. Cir. [Certiorari granted, 591 U. S. 1025.] Motion of petitioner to dispense with printing joint appendix granted.

No. 19–1401. HUGHES ET AL. *v.* NORTHWESTERN UNIVERSITY ET AL. C. A. 7th Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 19–8501. LIVINGSTON *v.* NEBRASKA. Ct. App. Neb.;

No. 19–8641. HANNA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 1;

No. 19–8657. JHA *v.* UNITED STATES. C. A. 4th Cir.;

No. 19–8717. FELTON *v.* CITY OF JACKSON, MISSISSIPPI. C. A. 5th Cir.;

No. 19–8766. IN RE WRIGHT;

No. 19–8767. IN RE WRIGHT;

No. 19–8807. CEAN *v.* UNITED STATES. C. A. 2d Cir.; and

No. 20–5180. FRAWLEY *v.* FRAWLEY. Ct. App. Mo., Western Dist.; Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 26, 2020, within which to pay the docketing fees required by this Court's Rule 38(a).

No. 20–8. DEUTSCHE BANK TRUST COMPANY AMERICAS ET AL. *v.* ROBERT R. MCCORMICK FOUNDATION ET AL. C. A. 2d Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE ALITO took no part in the consideration of this petition.

No. 20–5155. COUGHLIN *v.* UNITED STATES. C. A. D. C. Motion of petitioner for leave to proceed *in forma pauperis* denied.

Petitioner is allowed until October 26, 2020, within which to pay the docketing fee required by this Court's Rule 38(a). JUSTICE KAVANAUGH took no part in the consideration or decision of this motion.

No. 19–8685. IN RE FAIRCHILD-LITTLEFIELD;
No. 20–78. IN RE YOUNGBEAR;
No. 20–5145. IN RE TALBERT;
No. 20–5189. IN RE SMITH;
No. 20–5194. IN RE MOORE;
No. 20–5287. IN RE JACKSON;
No. 20–5349. IN RE ZIMMER;
No. 20–5573. IN RE UNDERWOOD;
No. 20–5582. IN RE DUPUY;
No. 20–5605. IN RE KOEHL;
No. 20–5607. IN RE ALLEN; and
No. 20–5609. IN RE BARNES. Petitions for writs of habeas corpus denied.

No. 19–8777. IN RE BRACKEN. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.9. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 20–5125. IN RE CALTON. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 19–1321. IN RE WOLF ET AL.;
No. 19–8374. IN RE SIMS;
No. 19–8734. IN RE DENG;
No. 19–8854. IN RE STROTHER;
No. 19–8905. IN RE MATYLINSKY;
No. 20–5040. IN RE SPENCER;
No. 20–5096. IN RE EVANS;
No. 20–5136. IN RE MOHAMMED; and
No. 20–5324. IN RE YBARRA. Petitions for writs of mandamus denied.

No. 19–1343. IN RE STARLING. Petition for writ of mandamus denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition.

No. 19–8384. IN RE SPAULDING. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 19–8860. IN RE ARUNACHALAM. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 20–5212. IN RE CALTON. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8.

No. 19–1286. IN RE SHAHIN;
No. 19–1287. IN RE SARHAN ET AL.;
No. 19–1377. IN RE SHAHIN;
No. 19–8436. IN RE YOUNG;
No. 20–44. IN RE GOLDEN; and
No. 20–5012. IN RE WOOLSEY-ROSS. Petitions for writs of mandamus and/or prohibition denied.

No. 19–8491. IN RE SUNDY; and
No. 19–8492. IN RE SUNDY. Motions of petitioner for leave to proceed *in forma pauperis* denied, and petitions for writs of mandamus and/or prohibition dismissed. See this Court's Rule 39.8.

No. 20–5045. IN RE JONES;

No. 20–5046. In re Jones; and

No. 20–5047. In re Jones. Motions of petitioner for leave to proceed *in forma pauperis* denied, and petitions for writs of mandamus and/or prohibition dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in non-criminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 20–5465. In re Felix. Petition for writ of prohibition denied.

Certiorari Denied

No. 18–942. Forgus *v.* Esper, Secretary of Defense. C. A. 4th Cir. Certiorari denied. Reported below: 753 Fed. Appx. 150.

No. 19–872. Hinson *v.* Bias et al. C. A. 11th Cir. Certiorari denied. Reported below: 927 F. 3d 1103.

No. 19–953. Farrar *v.* Williams, Executive Director, Colorado Department of Corrections, et al. C. A. 10th Cir. Certiorari denied. Reported below: 924 F. 3d 1126.

No. 19–985. Native Wholesale Supply Co. *v.* California ex rel. Becerra, Attorney General, et al. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 37 Cal. App. 5th 73, 249 Cal. Rptr. 3d 445.

No. 19–988. Living Essentials, LLC, et al. *v.* Washington. Ct. App. Wash. Certiorari denied. Reported below: 8 Wash. App. 2d 1, 436 P. 3d 857.

No. 19–1029. Austin *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 2019 IL 123910, 155 N. E. 3d 439.

No. 19–1067. Browder et al. *v.* Nehad et al. C. A. 9th Cir. Certiorari denied. Reported below: 929 F. 3d 1125.

No. 19–1091. Evans *v.* Sandy City, Utah, et al. C. A. 10th Cir. Certiorari denied. Reported below: 944 F. 3d 847.

No. 19–1094. Dailey *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 283 So. 3d 782.

No. 19–1099. City of Bakersfield, California, et al. *v.* Crawford. C. A. 9th Cir. Certiorari denied. Reported below: 944 F. 3d 1070.

No. 19–1138. Knight *v.* Grossman. C. A. 7th Cir. Certiorari denied. Reported below: 942 F. 3d 336.

No. 19–1147. Willowood, LLC, et al. *v.* Syngenta Crop Protection, LLC. C. A. Fed. Cir. Certiorari denied. Reported below: 944 F. 3d 1344.

No. 19–1157. Weatherly et al. *v.* Pershing, L. L. C. C. A. 5th Cir. Certiorari denied. Reported below: 945 F. 3d 915.

No. 19–1181. Estate of Steinbeck et al. *v.* Kaffaga, as Executrix of the Estate of Steinbeck. C. A. 9th Cir. Certiorari denied. Reported below: 938 F. 3d 1006.

No. 19–1203. Children's Hospital Association of Texas et al. *v.* Azar, Secretary of Health and Human Services, et al. C. A. D. C. Cir. Certiorari denied. Reported below: 933 F. 3d 764.

No. 19–1204. Arthrex, Inc. *v.* Smith & Nephew, Inc., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 935 F. 3d 1319.

No. 19–1218. Robinson *v.* Colorado. Sup. Ct. Colo. Certiorari denied. Reported below: 454 P. 3d 229.

No. 19–1221. Williams *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 942 F. 3d 1187.

No. 19–1242. Castro-Chavez *v.* Barr, Attorney General. C. A. 9th Cir. Certiorari denied.

No. 19–1246. McDaniel, Individually and as Personal Representative of the Estate of McDaniel, Deceased *v.* Upsher-Smith Laboratories, Inc. C. A. 6th Cir. Certiorari denied. Reported below: 893 F. 3d 941.

No. 19–1248. Dunn *v.* Hatch et al. C. A. 9th Cir. Certiorari denied. Reported below: 792 Fed. Appx. 449.

No. 19–1253. Shelton *v.* Patterson. Commw. Ct. Pa. Certiorari denied. Reported below: 208 A. 3d 213.

No. 19–1254. PENNSYLVANIA *v.* DAVIS. Sup. Ct. Pa. Certiorari denied. Reported below: 656 Pa. 213, 220 A. 3d 534.

No. 19–1264. BOYKIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 783 Fed. Appx. 1001.

No. 19–1265. FRIENDS OF DEVITO ET AL. *v.* WOLF, GOVERNOR OF PENNSYLVANIA, ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 658 Pa. 165, 227 A. 3d 872.

No. 19–1267. FORD MOTOR COMPANY OF CANADA, LTD. *v.* BELL ET AL. Ct. App. Cal., 1st App. Dist., Div. 4. Certiorari denied.

No. 19–1269. TCL COMMUNICATION TECHNOLOGY HOLDINGS LTD. ET AL. *v.* TELEFONAKTIEBOLAGET LM ERICSSON ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 943 F. 3d 1360.

No. 19–1276. WHITE, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF WHITE, DECEASED *v.* MEDTRONIC, INC., ET AL. C. A. 6th Cir. Certiorari denied.

No. 19–1277. THORPE *v.* DUMAS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 788 Fed. Appx. 644.

No. 19–1278. FUSSELL *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2019–01061 (La. 12/11/19), 286 So. 3d 1011.

No. 19–1279. LATURNER, KANSAS STATE TREASURER *v.* UNITED STATES ET AL.; and

No. 19–1285. LEA, ARKANSAS STATE AUDITOR *v.* UNITED STATES ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 933 F. 3d 1354.

No. 19–1281. TOROMANOVA *v.* SUMMIT REAL ESTATE SERVICES, LLC, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 785 Fed. Appx. 501.

No. 19–1283. TOLLE *v.* NORTHAM, GOVERNOR OF VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied.

No. 19–1288. SINGER *v.* MONDEX CORP. Ct. App. Ariz. Certiorari denied.

No. 19–1289. BENAVIDES *v.* BARR, ATTORNEY GENERAL, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 886.

No. 19–1290. BENNETT *v.* MARVEL ENTERTAINMENT, LLC. C. A. 11th Cir. Certiorari denied. Reported below: 782 Fed. Appx. 987.

No. 19–1292. MEITZNER *v.* SCHUETTE ET AL. C. A. 6th Cir. Certiorari denied.

No. 19–1296. HELIX TCS, INC. *v.* KENNEY. C. A. 10th Cir. Certiorari denied. Reported below: 939 F. 3d 1106.

No. 19–1299. CHAMBERLAIN GROUP, INC. *v.* TECHTRONIC INDUSTRIES CO. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 935 F. 3d 1341.

No. 19–1303. WOODS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 19–1304. INDIAN RIVER COUNTY, FLORIDA, ET AL. *v.* DEPARTMENT OF TRANSPORTATION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 945 F. 3d 515.

No. 19–1305. VAZQUEZ-GARCED, GOVERNOR OF PUERTO RICO, ET AL. *v.* FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 945 F. 3d 3.

No. 19–1306. UNITED PARCEL SERVICE, INC. *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 942 F. 3d 554.

No. 19–1309. PHIPPS *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 166 Idaho 1, 454 P. 3d 1084.

No. 19–1310. JALBERT, TRUSTEE OF THE F2 LIQUIDATING TRUST *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 1st Cir. Certiorari denied. Reported below: 945 F. 3d 587.

No. 19–1311. KIRK *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 19–1312. CHANG *v.* CHILDREN'S ADVOCACY CENTER OF DELAWARE. C. A. 3d Cir. Certiorari denied. Reported below: 938 F. 3d 384.

No. 19–1314. ANDERSON *v.* ROBITAILLE. Sup. Ct. N. H. Certiorari denied. Reported below: 172 N. H. 20, 205 A. 3d 1105.

No. 19–1317. AREIZAGA *v.* ADW CORP. C. A. 5th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 205.

No. 19–1318. DEEM *v.* DIMELLA-DEEM ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 800 Fed. Appx. 62.

No. 19–1319. MORABITO ET UX. *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 19–1320. JOHNSON *v.* ROCK SOLID JANITORIAL, INC., ET AL. Sup. Ct. Va. Certiorari denied.

No. 19–1322. VAUGHN *v.* BRAY ET AL. Sup. Ct. Ala. Certiorari denied.

No. 19–1324. CENTER FOR IMMIGRATION STUDIES *v.* COHEN ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 806 Fed. Appx. 7.

No. 19–1325. BOURTZAKIS *v.* BARR, ATTORNEY GENERAL, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 3d 616.

No. 19–1326. SCARBOROUGH *v.* COURT OF COMMON PLEAS OF PENNSYLVANIA, NORTHAMPTON COUNTY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 794 Fed. Appx. 238.

No. 19–1327. ZOCCO *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 2019 WI App 54, 388 Wis. 2d 622, 935 N. W. 2d 554.

No. 19–1329. STRONG *v.* U. S. BANK TRUST N. A., AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST. Ct. App. Ore. Certiorari denied. Reported below: 302 Ore. App. 186, 456 P. 3d 698.

No. 19–1330. MICHIGAN *v.* WALKER. Sup. Ct. Mich. Certiorari denied. Reported below: 505 Mich. 1057, 941 N. W. 2d 926.

No. 19–1331. XIU JIAN SUN *v.* SANDERS ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 176 App. Div. 3d 405, 107 N. Y. S. 3d 665.

No. 19–1332. KNOWLES *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 796 Fed. Appx. 1026.

No. 19–1334. SIGNODE INDUSTRIAL GROUP LLC ET AL. *v.* STONE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 943 F. 3d 381.

No. 19–1335. Dummer *v.* California Contractors State License Board et al. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 19–1336. National Retirement Fund et al. *v.* Metz Culinary Management, Inc. C. A. 2d Cir. Certiorari denied. Reported below: 946 F. 3d 146.

No. 19–1337. Phillippi *v.* Humble Design, L. L. C., et al. C. A. 5th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 223.

No. 19–1338. Piper *v.* Young, Warden. Sup. Ct. S. D. Certiorari denied. Reported below: 2019 S.D. 65, 936 N. W. 2d 793.

No. 19–1339. Kansas City Royals Baseball Corp. et al. *v.* Senne, Individually and on Behalf of All Others Similarly Situated, et al. C. A. 9th Cir. Certiorari denied. Reported below: 934 F. 3d 918.

No. 19–1340. Tribble et al. *v.* First Security Bank et al. Sup. Ct. Ark. Certiorari denied.

No. 19–1342. Mulcahy *v.* Aspen Pitkin County Housing Authority. Dist. Ct. Colo., Pitkin County. Certiorari denied.

No. 19–1344. Singh *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 783 Fed. Appx. 765.

No. 19–1346. Benkovitch *v.* Deutsche Bank National Trust Co. C. A. 11th Cir. Certiorari denied. Reported below: 777 Fed. Appx. 968.

No. 19–1347. Douglas *v.* Kondaur Capital Corp. Ct. App. Mich. Certiorari denied.

No. 19–1349. Miller, Chapter 7 Trustee for the Estate of HomeBanc Corp. *v.* Bear Stearns & Co., Inc., et al. C. A. 3d Cir. Certiorari denied. Reported below: 945 F. 3d 801.

No. 19–1350. Green *v.* Hooks et al. C. A. 11th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 411.

No. 19–1351. Ameranth, Inc. *v.* Domino's Pizza, LLC, et al. C. A. Fed. Cir. Certiorari denied. Reported below: 792 Fed. Appx. 780.

No. 19–1353. AGI Consulting LLC, by Al-Assaf as Trustee/Owner/Plan Administrator of an Alleged Non-Integrated Defined Benefit Plan *v.* American National Insurance Co. C. A. 10th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 296.

No. 19–1354. Tan Phan *v.* Minh Van Truong et al. C. A. 5th Cir. Certiorari denied. Reported below: 789 Fed. Appx. 420.

No. 19–1355. Jernigan *v.* Wilkie, Secretary of Veterans Affairs. C. A. Fed. Cir. Certiorari denied. Reported below: 809 Fed. Appx. 927.

No. 19–1356. Skelton *v.* Supreme Court of Illinois. Sup. Ct. Ill. Certiorari denied.

No. 19–1358. Michigan *v.* Shoulders. Ct. App. Mich. Certiorari denied.

No. 19–1359. Murphy *v.* City of Tulsa, Oklahoma. C. A. 10th Cir. Certiorari denied. Reported below: 950 F. 3d 641.

No. 19–1360. Cannon, as Special Representative for Cannon, et al. *v.* Savory. C. A. 7th Cir. Certiorari denied. Reported below: 947 F. 3d 409.

No. 19–1361. Jordan et al. *v.* Georgia Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 947 F. 3d 1322.

No. 19–1364. Henry et vir *v.* CMBB, LLC. C. A. 6th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 258.

No. 19–1366. Shiyang Huang *v.* Schultz et al. C. A. 8th Cir. Certiorari denied. Reported below: 791 Fed. Appx. 638.

No. 19–1367. Havens *v.* O'Connor, Chief Justice, Supreme Court of Ohio, et al. C. A. 6th Cir. Certiorari denied.

No. 19–1369. TRUMPF, Inc. *v.* CSI Worldwide, Inc. C. A. 7th Cir. Certiorari denied. Reported below: 944 F. 3d 661.

No. 19–1370. Thames *v.* City of Westland, Michigan, et al. C. A. 6th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 251.

No. 19–1371. Waldner *v.* Hartke et al. C. A. 8th Cir. Certiorari denied.

No. 19–1372. Ayala-Vazquez *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 19–1373. Ming Wei *v.* Pennsylvania Civil Service Commission. Commw. Ct. Pa. Certiorari denied. Reported below: 212 A. 3d 146.

No. 19–1374. Gutierrez *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 19–1375. Katz *v.* Incline Village General Improvement District. Sup. Ct. Nev. Certiorari denied. Reported below: 135 Nev. 670, 452 P. 3d 411.

No. 19–1376. Algignis, Inc. *v.* Federal Energy Regulatory Commission. C. A. D. C. Cir. Certiorari denied.

No. 19–1380. Olson *v.* Amatuzio et al. C. A. 8th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 433.

No. 19–1381. BioDelivery Sciences International, Inc. *v.* Aquestive Therapeutics, Inc., fka MonoSol RX, LLC. C. A. Fed. Cir. Certiorari denied. Reported below: 935 F. 3d 1362.

No. 19–1382. Sterling Jewelers, Inc. *v.* Jock et al. C. A. 2d Cir. Certiorari denied. Reported below: 942 F. 3d 617.

No. 19–1383. Leidig et al. *v.* BuzzFeed, Inc. C. A. 2d Cir. Certiorari denied. Reported below: 788 Fed. Appx. 76.

No. 19–1384. Pietrangelo *v.* Hudson. Ct. App. Ohio, 8th App. Dist., Cuyahoga County. Certiorari denied. Reported below: 2019-Ohio-1988, 136 N. E. 3d 867.

No. 19–1386. D. C., a Minor, By and Through His Guardian ad Litem, Garter *v.* San Diego County, California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 783 Fed. Appx. 766.

No. 19–1387. Daker *v.* Jackson, Sheriff, Fulton County, Georgia, et al. C. A. 11th Cir. Certiorari denied. Reported below: 942 F. 3d 1252.

No. 19–1390. Johnson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 945 F. 3d 174.

No. 19–1391. WHITELY *v.* MCCOY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 680.

No. 19–1393. DAVIS *v.* AMERICAN AIRLINES, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 792 Fed. Appx. 265.

No. 19–1394. ARNOLD *v.* SLATERY, ATTORNEY GENERAL OF TENNESSEE. C. A. 6th Cir. Certiorari denied.

No. 19–1395. ROGERS *v.* DISCOVER BANK. Ct. App. N. C. Certiorari denied. Reported below: 269 N. C. App. 109, 836 S. E. 2d 346.

No. 19–1396. STEPHENS *v.* KENNEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 802 Fed. Appx. 715.

No. 19–1397. GRAY *v.* DEPARTMENT OF JUSTICE. C. A. 9th Cir. Certiorari denied.

No. 19–1399. SHELBY ADVOCATES FOR VALID ELECTIONS ET AL. *v.* HARGETT, TENNESSEE SECRETARY OF STATE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 947 F. 3d 977.

No. 19–1400. REHABILITATION CENTER AT HOLLYWOOD HILLS, LLC *v.* STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 19–1403. VARTANIAN *v.* STATE BAR OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 794 Fed. Appx. 597.

No. 19–1404. LIEBERMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 802 Fed. Appx. 665.

No. 19–1405. JACOBSON *v.* BLAISE ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 175 App. Div. 3d 1629, 108 N. Y. S. 3d 515.

No. 19–1406. LORD, LEWIS & COLEMAN, LLC *v.* BELLACO, INC., ET AL. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 19–1407. AINABE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 938 F. 3d 685.

No. 19–1408. COPPEDGE ET AL *v.* CHARLTON. C. A. 3d Cir. Certiorari denied. Reported below: 798 Fed. Appx. 747.

No. 19–1409. BLOOMGARDEN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 4. Certiorari denied.

No. 19–1410. BULLUCK *v.* NEWTEK SMALL BUSINESS FINANCE, INC., DBA NEWTEK BUSINESS SERVICES, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 698.

No. 19–1413. ABAZARI *v.* DEPARTMENT OF EDUCATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 831.

No. 19–1416. FIJALKOWSKI *v.* WHEELER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 906.

No. 19–1417. CESAR *v.* BARR, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 779 Fed. Appx. 824.

No. 19–1418. ZOIE H. *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 304 Neb. 868, 937 N. W. 2d 801.

No. 19–1419. HENRY-BEY *v.* CASTRO ET AL. C. A. Fed. Cir. Certiorari denied.

No. 19–1420. HERRMANN *v.* MCCARTHY, SECRETARY OF THE ARMY. C. A. 9th Cir. Certiorari denied.

No. 19–1421. LAFLAMME *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 795 Fed. Appx. 272.

No. 19–1422. JACKSON *v.* BRUN, JUDGE, ET AL. C. A. 5th Cir. Certiorari denied.

No. 19–1423. VORTMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 470.

No. 19–1424. LEBEAU *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 949 F. 3d 334.

No. 19–1425. PALM VALLEY HEALTH CARE, INC. *v.* AZAR, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 5th Cir. Certiorari denied. Reported below: 947 F. 3d 321.

No. 19–1426. PECINA *v.* WILKIE, SECRETARY OF VETERANS AFFAIRS. C. A. 3d Cir. Certiorari denied. Reported below: 795 Fed. Appx. 124.

No. 19–1428. MORIN *v.* MONTANA OFFICE OF DISCIPLINARY COUNSEL. Sup. Ct. Mont. Certiorari denied.

No. 19–1429. PENA *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 581 S. W. 3d 467.

No. 19–1430. POLIDI *v.* LEE ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 784 Fed. Appx. 778.

No. 19–1431. OLSON ET AL. *v.* O'BRIEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 786 Fed. Appx. 717.

No. 19–1432. SINEK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 789 Fed. Appx. 910.

No. 19–1435. THOMAS *v.* IANCU, DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 796 Fed. Appx. 743.

No. 19–1438. ABERNATHY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 791 Fed. Appx. 596.

No. 19–1439. JURGENSEN *v.* POMPEO, SECRETARY OF STATE, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 785 Fed. Appx. 117.

No. 19–1443. S. O., INDIVIDUALLY AND ON BEHALF OF HER MINOR SON, B. O. *v.* HINDS COUNTY SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 794 Fed. Appx. 427.

No. 19–1444. GLAXOSMITHKLINE LLC *v.* UNITED FOOD AND COMMERCIAL WORKERS LOCAL 1776 AND PARTICIPATING EMPLOYERS HEALTH AND WELFARE FUND ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 945 F. 3d 749.

No. 19–1446. KEARNEY ET AL. *v.* TRAVELERS CASUALTY & SURETY COMPANY OF AMERICA. C. A. 11th Cir. Certiorari denied. Reported below: 795 Fed. Appx. 671.

No. 19–1448. EXCEL MODULAR SCAFFOLD & LEASING CO., DBA EXCEL SCAFFOLD & LEASING *v.* OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 943 F. 3d 748.

No. 19–1449. DAVIS *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Certiorari denied. Reported below: 788 Fed. Appx. 618.

No. 19–1450. RUSSELL *v.* TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 275.

No. 19–1451. SANOFI-AVENTIS DEUTSCHLAND GMBH *v.* MYLAN PHARMACEUTICALS INC. C. A. Fed. Cir. Certiorari denied. Reported below: 791 Fed. Appx. 916.

No. 19–1454. PALANIAPPAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 797 Fed. Appx. 665.

No. 19–1455. YOUNGBLOOD-WEST *v.* AFLAC INC. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 985.

No. 19–1457. HUDAK *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2019 IL App (2d) 180487–U.

No. 19–1460. MENGEDOHT, INDIVIDUALLY, AND AS EXECUTOR OF THE MENGEDOHT ESTATE AND AS TRUSTEE OF THE H C J HOLDINGS TRUST *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 790 Fed. Appx. 841.

No. 19–1462. PRINCIPAL LIFE INSURANCE CO. *v.* ROZO. C. A. 8th Cir. Certiorari denied. Reported below: 949 F. 3d 1071.

No. 19–1463. OLIVER *v.* OLIVER ET AL. Ct. App. Miss. Certiorari denied.

No. 19–1464. PRIMBAS ET AL. *v.* IANCU, DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 783 Fed. Appx. 1038.

No. 19–1465. MARCELIS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 220 A. 3d 669.

No. 19–1466. KORTHALS *v.* STROZESKI. C. A. 6th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 967.

No. 19–1467. ORTLOFF *v.* BRNOVICH, ATTORNEY GENERAL OF ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 19–1468. WILEY *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 19–1469. HASBROUCK *v.* STATE BAR OF NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 136 Nev. 818, 533 P. 3d 688.

No. 19–1470. GURROLA *v.* WALGREEN CO. C. A. 5th Cir. Certiorari denied. Reported below: 791 Fed. Appx. 503.

No. 19–1471. TKACZ *v.* BOGDEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 788 Fed. Appx. 528.

No. 19–1472. DAVIS *v.* CROW, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 794 Fed. Appx. 683.

No. 19–1473. HARTSFIELD *v.* DORETHY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 949 F. 3d 307.

No. 19–1474. HERNDON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied.

No. 19–1478. LARSGARD *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 19–6804. HELMS *v.* WELLS FARGO BANK, N. A., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 775 Fed. Appx. 895.

No. 19–7191. BAKER *v.* MACY'S FLORIDA STORES, LLC. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 280 So. 3d 68.

No. 19–7426. NJONGE *v.* GILBERT, SUPERINTENDENT. C. A. 9th Cir. Certiorari denied. Reported below: 773 Fed. Appx. 1005.

No. 19–7501. LIVADITIS *v.* DAVIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 933 F. 3d 1036.

No. 19–7621. BENTON *v.* BREWER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 942 F. 3d 305.

No. 19–7731. HERROLD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 941 F. 3d 173.

No. 19–7778. HILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 937 F. 3d 188.

No. 19–7825. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 943 F. 3d 979.

No. 19–7904. BONDS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 786 Fed. Appx. 323.

No. 19–7939. POPE *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 2019 WI 106, 389 Wis. 2d 390, 936 N. W. 2d 606.

No. 19–8006. GREINER *v.* MACOMB COUNTY, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 19–8009. PANAH *v.* BROOMFIELD, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 935 F. 3d 657.

No. 19–8039. CLARK *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2012–0508 (La. 6/28/19), 285 So. 3d 414.

No. 19–8062. LEBOUEF *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 19–8105. ANDERSON *v.* PAYNE, DIRECTOR, ARKANSAS DIVISION OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 3d 949.

No. 19–8197. FURNISH *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 19–8221. FAGATELE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 944 F. 3d 1230.

No. 19–8262. ALGARIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 19–8296. MILLA-PEREZ *v.* BARR, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 19–8300. HYDEN *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 308 Ga. 218, 839 S. E. 2d 506.

No. 19–8341. KNIGHT *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 936 F. 3d 1322.

No. 19–8378. HOWELL *v.* GARMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 939 F. 3d 260.

No. 19–8386. CULVERHOUSE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 19–8388. WILLIAMS *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 949 F. 3d 966.

No. 19–8392. BALDERAS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 19–8396. HILL *v.* JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 19–8398. WHITE *v.* DETROIT EAST COMMUNITY MENTAL HEALTH ET AL. Ct. App. Mich. Certiorari denied.

No. 19–8403. MIGUEL LOPEZ *v.* SHERMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 19–8405. REYES *v.* KAISER PERMANENTE. C. A. 9th Cir. Certiorari denied. Reported below: 782 Fed. Appx. 605.

No. 19–8407. RAMIREZ *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 287 So. 3d 541.

No. 19–8409. THANKSNIEKY PHUONG *v.* HILL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 19–8414. SIMMONS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 163.

No. 19–8418. STAMPS *v.* CAPALUPO ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 780 Fed. Appx. 45.

No. 19–8419. TRACZYK *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 19–8420. WILSON *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 19–8421. TELLO *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 19–8424. YEYILLE *v.* MIAMI-DADE COUNTY PUBLIC SCHOOLS ET AL. C. A. 11th Cir. Certiorari denied.

No. 19–8425. ANDERSON *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 19–8427. MCNELEY *v.* SHEPPARD, MULLIN, RICHTER & HAMPTON LLP ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 597.

No. 19–8428. WYATT *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 19–8429. MAQBOOL *v.* HICKS, COMMISSIONER, NEW JERSEY DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 19–8430. LATOUCHE *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 19–8432. LAFLAMME *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 19–8433. JOHN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 19–8434. UKKERD *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 19–8435. WILLIAMS *v.* DUFFY ET AL. C. A. 9th Cir. Certiorari denied.

No. 19–8438. EMIL *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 135 Nev. 640, 448 P. 3d 553.

No. 19–8441. VIEIRA *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 19–8442. WALKER *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 287 So. 3d 572.

No. 16409–8443. YOUNG *v.* JACKSON-MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 19–8444. ZACKE *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 19–8446. TWITTY *v.* SMITH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 19–8448. DANTZLER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2019 IL App (1st) 170233–U.

No. 19–8452. STRICKLAND *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2019 IL App (1st) 161098, 146 N. E. 3d 15.

No. 19–8454. BOYKIN *v.* INCH, SECRETARY, FLORIDA, DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 19–8455. BRUZZONE *v.* MCMANIS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 785 Fed. Appx. 503.

No. 19–8457. ALLEN *v.* MINE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 181.

No. 19–8458. ALLEN *v.* JORDAN ET AL. C. A. 4th Cir. Certiorari denied.

No. 19–8460. GOMEZ *v.* BRAUN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 776 Fed. Appx. 460.

No. 19–8462. PEREZ *v.* JONES ET AL. C. A. 11th Cir. Certiorari denied.

No. 19–8465. MOORE *v.* JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 19–8471. VAUGHN *v.* HAWKINS ET AL. C. A. 6th Cir. Certiorari denied.

No. 19–8472. YOUNG *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 19–8473. ROGERS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 285 So. 3d 872.

No. 19–8476. YERTON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 19–8481. VETETO *v.* ESTES, WARDEN, ET AL. (two judgments). Sup. Ct. Ala. Certiorari denied.

No. 19–8482. GRAY *v.* FRAKES, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 8th Cir. Certiorari denied.

No. 19–8484. MEHDIPOUR *v.* MIDWEST CITY, OKLAHOMA, ET AL. C. A. 10th Cir. Certiorari denied.

No. 19–8487. BERGER *v.* ADAMS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 775 Fed. Appx. 663.

No. 19–8488. BROWN *v.* SAUL, COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 785 Fed. Appx. 120.

No. 19–8490. STEVENS *v.* COLLINS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 795 Fed. Appx. 393.

No. 19–8495. Abdul-Kareem *v.* Vermont Department of Health. C. A. 2d Cir. Certiorari denied.

No. 19–8496. C. K. J. *v.* M. J. T. Super. Ct. Pa. Certiorari denied.

No. 19–8498. Diggs *v.* Gallucci, Chief of Police, City of Carlsbad, California; and Diggs *v.* Shiomoto, Director, California Department of Motor Vehicles. C. A. 9th Cir. Certiorari denied.

No. 19–8499. Hoyt *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 8 Cal. 5th 892, 456 P. 3d 933.

No. 19–8502. Beverly *v.* Illinois. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 2019 IL App (4th) 160168–U.

No. 19–8505. Tolbert *v.* Waggoner et al. C. A. 7th Cir. Certiorari denied.

No. 19–8507. Taylor *v.* Corporation Worldwide. C. A. 8th Cir. Certiorari denied.

No. 19–8511. Morrison *v.* Hale. C. A. 8th Cir. Certiorari denied. Reported below: 789 Fed. Appx. 558.

No. 19–8514. Popal *v.* New York. Ct. App. N. Y. Certiorari denied. Reported below: 35 N. Y. 3d 943, 147 N. E. 3d 568.

No. 19–8516. Mrazek *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 19–8517. Novotny *v.* Plexus Corp. et al. C. A. 7th Cir. Certiorari denied. Reported below: 777 Fed. Appx. 164.

No. 19–8518. Newson *v.* Inch, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 488.

No. 19–8519. Myers *v.* Nebraska. Sup. Ct. Neb. Certiorari denied. Reported below: 304 Neb. 789, 937 N. W. 2d 181.

No. 19–8521. Daniels *v.* Kowalski, Warden. C. A. 6th Cir. Certiorari denied.

No. 19–8522. Felton *v.* Massachusetts. App. Ct. Mass. Certiorari denied. Reported below: 96 Mass. App. 1117, 140 N. E. 3d 943.

No. 19–8526. TALLEY *v.* MAZZOCCA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 796 Fed. Appx. 61.

No. 19–8527. EAVES *v.* COLORADO DEPARTMENT OF CORRECTIONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 185.

No. 19–8528. RUSSELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 198.

No. 19–8529. CAIN *v.* REWERTS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 19–8532. LYNCH *v.* CABELL, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 19–8533. LAJEUNESSE *v.* CHAMBERS ET AL. C. A. 8th Cir. Certiorari denied.

No. 19–8538. SMILES *v.* BERKS COUNTY, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 778 Fed. Appx. 84.

No. 19–8539. SPENCER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2018 IL App (1st) 160102–U.

No. 19–8541. ABDULRAZZAK *v.* SOUTH DAKOTA BOARD OF PARDONS AND PAROLES. Sup. Ct. S. D. Certiorari denied. Reported below: 2020 S.D. 10, 940 N. W. 2d 672.

No. 19–8545. BLAKE *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 289 So. 3d 483.

No. 19–8547. BLUEFORD *v.* HOOPER, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 789.

No. 19–8549. ADEYINKA *v.* BARRS ET AL. C. A. 9th Cir. Certiorari denied.

No. 19–8550. NICOLAISON *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 19–8551. PATTERSON *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 311 Kan. 59, 455 P. 3d 792.

No. 19–8552. MCTIZIC *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 19–8553. PHILLIPS *v.* OHIO. Ct. App. Ohio, 6th App. Dist., Lucas County. Certiorari denied. Reported below: 2019-Ohio-3707.

No. 19–8554. SUTHERLAND *v.* SAUL, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 789 Fed. Appx. 612.

No. 19–8556. ELEBUTE *v.* VILLAGE CAPITAL & INVESTMENT, LLC. C. A. 5th Cir. Certiorari denied. Reported below: 795 Fed. Appx. 312.

No. 19–8561. CORONA-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 788 Fed. Appx. 965.

No. 19–8565. ANDERSEN *v.* TAYLOR. C. A. 9th Cir. Certiorari denied.

No. 19–8571. KING *v.* OHIO DEPARTMENT OF JOB AND FAMILY SERVICES. Ct. App. Ohio, 9th App. Dist., Summit County. Certiorari denied. Reported below: 2019-Ohio-2989.

No. 19–8573. KONEPACHIT *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 19–8574. LATIMER *v.* NORTH CAROLINA DEPARTMENT OF TRANSPORTATION. C. A. 4th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 781.

No. 19–8577. ROSCOE *v.* HORTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 19–8580. PLUMLEE *v.* BACA, WARDEN. Ct. App. Nev. Certiorari denied. Reported below: 135 Nev. 702.

No. 19–8581. HARMON *v.* SHARP, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 936 F. 3d 1044.

No. 19–8583. HECHAVARRIA *v.* BARR, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 782 Fed. Appx. 56.

No. 19–8587. YOUNG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 942 F. 3d 349.

No. 19–8590. MARR *v.* DOYLE. Sup. Ct. Fla. Certiorari denied.

No. 19–8591. PENNINGTON *v.* PAYNE, DIRECTOR, ARKANSAS DIVISION OF CORRECTION, ET AL. C. A. 8th Cir. Certiorari denied.

No. 19–8592. ALMONTE, AKA LA FUERTE, AKA MONTANA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 952 F. 3d 83.

No. 19–8593. CRIM *v.* OHIO. Ct. App. Ohio, 8th App. Dist., Cuyahoga County. Certiorari denied. Reported below: 2019-Ohio-3771.

No. 19–8595. WILLIAMS *v.* HOGAN, GOVERNOR OF MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 791 Fed. Appx. 416.

No. 19–8596. VANDYCK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 776 Fed. Appx. 495.

No. 19–8599. PRATT *v.* BARR, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 779 Fed. Appx. 867.

No. 19–8600. TORRES *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 304 Neb. 753, 936 N. W. 2d 730.

No. 19–8601. WALKER *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 19–8602. WASHINGTON *v.* SANTA RITA JAIL. C. A. 9th Cir. Certiorari denied.

No. 19–8604. HALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 781.

No. 19–8605. BARNES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 795 Fed. Appx. 191.

No. 19–8606. THORSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 19–8607. THOMPSON *v.* GRIFFIN, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 19–8608. ROBERTSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 948 F. 3d 912.

No. 19–8609. SAMEER *v.* KHERA ET AL. C. A. 9th Cir. Certiorari denied.

No. 19–8611. SCOTT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 19–8612. STAMPER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 785 Fed. Appx. 382.

No. 19–8613. WIGGINS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 19–8615. ZHIRY ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 19–8616. HELTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 944 F. 3d 198.

No. 19–8617. PEREZ CHAVEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 789 Fed. Appx. 215.

No. 19–8618. DANIELS *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 349 Ga. App. 681, 824 S. E. 2d 754.

No. 19–8619. COBB *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 19–8620. PRIOR *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 788 Fed. Appx. 228.

No. 19–8622. MCQUEARY-LAYNE *v.* LOUISIANA STATE BOARD OF NURSING ET AL. C. A. 5th Cir. Certiorari denied.

No. 19–8623. MOSELEY *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 791 Fed. Appx. 428.

No. 19–8624. DEFREITAS *v.* CALLADO, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 172 App. Div. 3d 1811, 100 N. Y. S. 3d 779.

No. 19–8625. DAVIS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 289 So. 3d 871.

No. 19–8627. CARDENAS *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 19–8628. NORMAN, ADMINISTRATOR OF THE ESTATE OF SHEARLDS, DECEASED *v.* TEMPLE UNIVERSITY HEALTH SYSTEM,

DBA TEMPLE UNIVERSITY HOSPITAL, ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 208 A. 3d 1115.

No. 19–8629. NYENEKOR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 784 Fed. Appx. 810.

No. 19–8630. LUSSY *v.* LUSSY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 426.

No. 19–8631. SIMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 786 Fed. Appx. 418.

No. 19–8632. RUMANEK *v.* FALLON ET AL. C. A. 3d Cir. Certiorari denied.

No. 19–8633. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 19–8634. BEY, FKA BROWN *v.* DOUGHTERY COUNTY STATE COURT. C. A. 11th Cir. Certiorari denied.

No. 19–8636. PETERSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 19–8637. REEVES *v.* STODDARD, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 865.

No. 19–8638. BRZOWSKI *v.* EXECUTIVE COMMITTEE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 22.

No. 19–8639. ALLEN *v.* WIRE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 182.

No. 19–8640. LITTLES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 19–8642. DAVIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 953 F. 3d 480.

No. 19–8643. EVATT *v.* STEPHAN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 771 Fed. Appx. 330.

No. 19–8644. KING *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 834.

No. 19–8645. Ross *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 948 F. 3d 243.

No. 19–8646. Griffin *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 3d 759.

No. 19–8647. Diez *v.* Inch, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 789 Fed. Appx. 837.

No. 19–8648. McNeal *v.* Fleming et al. C. A. 9th Cir. Certiorari denied.

No. 19–8649. Johnson *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 952.

No. 19–8651. Remillard *v.* Ohio. Ct. App. Ohio, 5th App. Dist., Knox County. Certiorari denied. Reported below: 2019-Ohio-3545.

No. 19–8652. Sanchez *v.* Real, Judge, United States District Court for the Central District of California, et al. C. A. 9th Cir. Certiorari denied.

No. 19–8653. Ramirez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 188.

No. 19–8654. Senese *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 499.

No. 19–8655. Barrios-Alvarado *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 187.

No. 19–8658. King *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 790 Fed. Appx. 639.

No. 19–8659. Segovia *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 789 Fed. Appx. 438.

No. 19–8660. Riley *v.* Arizona. Sup. Ct. Ariz. Certiorari denied. Reported below: 248 Ariz. 154, 459 P. 3d 66.

No. 19–8662. Scott *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 789 Fed. Appx. 467.

No. 19–8663. Keith *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 19–8664. KIRVIN *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 19–8665. JACKSON *v.* SUPREME COURT OF ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 19–8666. MAYES *v.* LEBO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 19–8667. ALFRED *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 434.

No. 19–8669. TYSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 947 F. 3d 139.

No. 19–8670. RAMOS TAPIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 3d 729.

No. 19–8672. BRIDGES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2019 IL App (1st) 163032–U.

No. 19–8673. BURRESS-EL *v.* BORN ET AL. C. A. 6th Cir. Certiorari denied.

No. 19–8674. PAEZ *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 947 F. 3d 649.

No. 19–8675. CHANDLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 789 Fed. Appx. 492.

No. 19–8676. SMALL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 797 Fed. Appx. 675.

No. 19–8677. ASHEN *v.* DISTEFANO ET AL. C. A. 6th Cir. Certiorari denied.

No. 19–8678. FALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 955 F. 3d 363.

No. 19–8680. ZITALPOPOCA-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 494.

No. 19–8681. SUNG HONG ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 151.

No. 19–8682. FULMER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 792 Fed. Appx. 312.

No. 19–8683. GRANDE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 302.

No. 19–8684. HILL *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 192.

No. 19–8686. HARRIS *v.* BOZZUTO GROUP ET AL. C. A. 3d Cir. Certiorari denied.

No. 19–8687. GHAZAVI *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 19–8688. INGRAM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 462.

No. 19–8689. LAWRENCE *v.* MEDTRONIC. C. A. 9th Cir. Certiorari denied. Reported below: 791 Fed. Appx. 679.

No. 19–8690. WHEELER *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 19–8691. INFANTE-CABALLERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 789 Fed. Appx. 614.

No. 19–8692. SHIELDS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 952 F. 3d 728.

No. 19–8693. TRUJILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 952.

No. 19–8694. ROUSE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 19–8696. DITOMASSO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 3d 58.

No. 19–8697. DAVIS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 19–8698. STONE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 19–8699. SPENCER *v.* MINTER ET AL. C. A. 5th Cir. Certiorari denied.

No. 19–8700. STRODTMAN *v.* FRAKES, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 8th Cir. Certiorari denied.

No. 19–8701. RAYMOND *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA. C. A. 8th Cir. Certiorari denied.

No. 19–8702. SEDBERRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 19–8703. SOSA-BALADRON ET UX. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 313.

No. 19–8704. ALVARADO *v.* HORTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 19–8705. ARKIM, AKA MASON *v.* NOETH, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 177 App. Div. 3d 1327, 110 N. Y. S. 3d 365.

No. 19–8706. BUTCHER *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 19–8710. FRAZIER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 790 Fed. Appx. 790.

No. 19–8713. BAILEY *v.* WAINWRIGHT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 951 F. 3d 343.

No. 19–8714. TREE *v.* ROBERTSON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 19–8715. TREFFINGER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 428.

No. 19–8716. PEPKE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 785 Fed. Appx. 156.

No. 19–8718. MILLER *v.* CAPRA, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 803 Fed. Appx. 493.

No. 19–8719. LASTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 397.

No. 19–8720. PURI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 859.

No. 19–8721. ARGENTINO *v.* STAMPS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 975.

No. 19–8722. Morris-Calderon *v.* James Randi Educational Foundation. Ct. App. Cal., 2d App. Dist., Div. 5. Certiorari denied.

No. 19–8723. Irish *v.* Ohio. Ct. App. Ohio, 3d App. Dist., Mercer County. Certiorari denied. Reported below: 2019-Ohio-2765, 140 N. E. 3d 209.

No. 19–8724. Garry *v.* Trane Co. Sup. Ct. Wis. Certiorari denied.

No. 19–8725. Glenn *v.* Michigan. Sup. Ct. Mich. Certiorari denied. Reported below: 505 Mich. 996, 939 N. W. 2d 269.

No. 19–8726. Goodman *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 19–8727. Humphries *v.* Sherman, Warden. C. A. 9th Cir. Certiorari denied.

No. 19–8728. Harrell *v.* California. Ct. App. Cal., 1st App. Dist., Div. 4. Certiorari denied.

No. 19–8729. Gilbert *v.* Barrios-Gilbert. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 19–8730. Kennedy *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 697.

No. 19–8731. Gelin *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 712.

No. 19–8732. Leyva Hernandez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 382.

No. 19–8736. Clark *v.* Washington. Ct. App. Wash. Certiorari denied.

No. 19–8737. Steiner *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 3d 1282.

No. 19–8738. Clark *v.* Laughlin, Warden. Sup. Ct. Ga. Certiorari denied.

No. 19–8739. Womack *v.* Finkelstein, Assistant Clerk, Superior Court of North Carolina, Buncombe County. C. A. 4th Cir. Certiorari denied. Reported below: 785 Fed. Appx. 123.

No. 19–8742. NICHOLS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 19–8743. GUERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 790 Fed. Appx. 20.

No. 19–8744. CASTRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 788 Fed. Appx. 272.

No. 19–8745. SCOTT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 19–8746. GROUP *v.* OHIO. Ct. App. Ohio, 7th App. Dist., Mahoning County. Certiorari denied. Reported below: 2019-Ohio-3958.

No. 19–8747. CORONADO *v.* STINSON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 19–8748. KNUTH *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 19–8749. CRAYTON *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 19–8751. BASRA *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 10 Wash. App. 2d 279, 448 P. 3d 107.

No. 19–8752. ALLEN *v.* MOORE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 212.

No. 19–8754. MARTINEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 792 Fed. Appx. 610.

No. 19–8755. WEST *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 322.

No. 19–8756. INGRAM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 947 F. 3d 1021.

No. 19–8757. GIBBS *v.* LEGRAND, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 795 Fed. Appx. 497.

No. 19–8758. LI QIN ET AL. *v.* 99 CENTS ONLY STORES, LLC, ET AL. Ct. App. Cal., 2d App. Dist., Div. 1. Certiorari denied.

No. 19–8759. RAY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 599.

No. 19–8760. STEWART *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 19–8761. RIASCOS *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 811.

No. 19–8762. ST. GEORGE *v.* RANSOM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 19–8763. DELGLYN *v.* BARROS ET AL. Sup. Ct. Wis. Certiorari denied.

No. 19–8764. BURNEY *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 293 So. 3d 1019.

No. 19–8765. AREGA *v.* SADLER, JUDGE, ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 158 Ohio St. 3d 1509, 2020-Ohio-2815, 144 N. E. 3d 463.

No. 19–8768. ALBRITTON *v.* BRNOVICH, ATTORNEY GENERAL OF ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 19–8769. SHUMAKE *v.* VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 794 Fed. Appx. 299.

No. 19–8770. ST. PREUX *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 731.

No. 19–8771. RISENHOOVER *v.* MUNIZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 19–8772. TORRES *v.* HANSEN ET AL. C. A. 9th Cir. Certiorari denied.

No. 19–8773. HARRISON *v.* LAUGHLIN, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 19–8774. GUTIERREZ *v.* TEXAS HEALTH AND HUMAN SERVICES COMMISSION. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 19–8775. GARDNER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 19–8776. HATTER *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 788 Fed. Appx. 229.

No. 19–8778. ALLEN *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 248 Ariz. 352, 460 P. 3d 1236.

No. 19–8779. ELHUZAYEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 621.

No. 19–8781. FRANCIS *v.* SUPERIOR COURT OF NORTH CAROLINA, WAKE COUNTY. C. A. 4th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 815.

No. 19–8782. GRAHAM *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied.

No. 19–8783. GONZALEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 949 F. 3d 30.

No. 19–8784. BROWN *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 277.

No. 19–8785. WILLIAMS *v.* COOPER, GOVERNOR OF NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 811.

No. 19–8786. JONES *v.* MAYS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 19–8787. JAMES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 955 F. 3d 336.

No. 19–8788. JOB *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 98.

No. 19–8789. VERDUZCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 19–8790. WHICHARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 790 Fed. Appx. 633.

No. 19–8791. VASQUEZ-SOTO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 791 Fed. Appx. 475.

No. 19–8792. HUMMEL *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS

DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 282.

No. 19–8793. R. W. *v.* DAUPHIN COUNTY SOCIAL SERVICES FOR CHILDREN AND YOUTH. Sup. Ct. Pa. Certiorari denied.

No. 19–8794. TYLER *v.* HOOKS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 173.

No. 19–8795. LOPER *v.* KNUTSON, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 19–8796. RODGERS *v.* MCINTYRE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 792 Fed. Appx. 317.

No. 19–8798. SALAHUDDIN *v.* SHINN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. Sup. Ct. Ariz. Certiorari denied.

No. 19–8800. KNIGHT *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied.

No. 19–8801. JONES ET AL. *v.* LAMAR CO., LLC. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 291 So. 3d 559.

No. 19–8802. LEWIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 19–8803. ADAMS *v.* OHIO. Ct. App. Ohio, 7th App. Dist., Mahoning County. Certiorari denied. Reported below: 2019-Ohio-4090.

No. 19–8804. A. M. *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 134 N. E. 3d 361.

No. 19–8805. BRUCE *v.* GREAT BRITAIN ET AL. C. A. 6th Cir. Certiorari denied.

No. 19–8806. DIXON *v.* AMES, SUPERINTENDENT, MOUNT OLIVE CORRECTIONAL COMPLEX. Sup. Ct. App. W. Va. Certiorari denied.

No. 19–8808. ASHFORD *v.* STEPHAN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 781 Fed. Appx. 275.

No. 19–8809. ALEXANDER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 954 F. 3d 910.

No. 19–8810. DAVIDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 800.

No. 19–8811. CRANE *v.* SHINN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 19–8812. PINEDA-HERNANDEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 948 F. 3d 789.

No. 19–8813. FRANKS *v.* KIRK, DEPUTY SHERIFF, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 610.

No. 19–8815. NUNEZ-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 791 Fed. Appx. 475.

No. 19–8817. HARRELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 791 Fed. Appx. 479.

No. 19–8818. JOHNSON *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL. Ct. App. Cal., 2d App. Dist., Div. 1. Certiorari denied.

No. 19–8819. RIVERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 791 Fed. Appx. 200.

No. 19–8820. VELAZQUEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 19–8822. MONTERO *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 794 Fed. Appx. 928.

No. 19–8823. PEDRIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 19–8824. NEWTON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied.

No. 19–8825. NAVARRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 790 Fed. Appx. 644.

No. 19–8826. GENRETTE *v.* BANK OF NEW YORK MELLON TRUST CO. C. A. 3d Cir. Certiorari denied. Reported below: 797 Fed. Appx. 739.

No. 19–8827. FOWLER *v.* INDYMAC BANK, FSB, ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 176 App. Div. 3d 682, 107 N. Y. S. 3d 708.

No. 19–8828. LEGGETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 19–8829. PURNELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 858.

No. 19–8830. OXENDINE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 766.

No. 19–8833. MANN *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 466 Md. 473, 221 A. 3d 965.

No. 19–8834. DUTTA-ROY *v.* JYSK BED'N LINEN, DBA BY DESIGN FURNITURE, AS SUCCESSOR TO QUICK SHIP HOLDING, INC., DBA BY DESIGN FURNITURE. C. A. 11th Cir. Certiorari denied. Reported below: 787 Fed. Appx. 608.

No. 19–8836. CULPEPPER *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 19–8837. NIPPER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 197.

No. 19–8839. MORROW *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 294 So. 3d 265.

No. 19–8840. COOPER *v.* WEXFORD HEALTH SOURCES, INC., ET AL. C. A. 7th Cir. Certiorari denied.

No. 19–8841. MOORE *v.* ORANGE COUNTY, CALIFORNIA, ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 19–8842. PRADO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 788 Fed. Appx. 597.

No. 19–8843. PUSHKAROVYCH *v.* BARR, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied.

No. 19–8844. PICCONE *v.* UNITED STATES PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 791 Fed. Appx. 932.

No. 19–8845. BRANT *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 284 So. 3d 398.

No. 19–8846. NOWAKOWSKI *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 220 A. 3d 658.

No. 19–8847. NIXON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 925.

No. 19–8848. PHILLIPS *v.* OBERLANDER ET AL. C. A. 3d Cir. Certiorari denied.

No. 19–8849. PEDROZA *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 291 So. 3d 541.

No. 19–8851. SZANTO *v.* JURGENS. C. A. 11th Cir. Certiorari denied.

No. 19–8852. SAMEER *v.* KHERA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 19–8853. SAJOUS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 19–8855. JOHNSON *v.* TESTER ET AL. C. A. 6th Cir. Certiorari denied.

No. 19–8856. BROWN *v.* BROWN. C. A. 3d Cir. Certiorari denied. Reported below: 783 Fed. Appx. 267.

No. 19–8858. LYMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 789.

No. 19–8859. MAUS *v.* ECKSTEIN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 19–8861. APTILIASIMOV *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 19–8862. ALLEN *v.* TOTAL VISA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 170.

No. 19–8863. STRAUSBAUGH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 19–8864. WILLIAMS *v.* SAMSON RESOURCES CORP. C. A. 3d Cir. Certiorari denied. Reported below: 786 Fed. Appx. 364.

No. 19–8865. SCHULTZ *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 2020 WI 24, 390 Wis. 2d 570, 939 N. W. 2d 519.

No. 19–8866. CHUM *v.* COYNE-FAGUE, DIRECTOR, RHODE ISLAND DEPARTMENT OF CORRECTIONS. C. A. 1st Cir. Certiorari denied. Reported below: 948 F. 3d 438.

No. 19–8867. Bradley *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 788 Fed. Appx. 989.

No. 19–8868. Tims *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 792 Fed. Appx. 348.

No. 19–8869. Wade *v.* Monroe County District Attorney et al. C. A. 3d Cir. Certiorari denied. Reported below: 800 Fed. Appx. 114.

No. 19–8870. Vallejo Recio *v.* Vasquez et al. C. A. 5th Cir. Certiorari denied.

No. 19–8871. Schulte *v.* Barr, Attorney General, et al. C. A. 2d Cir. Certiorari denied.

No. 19–8872. Simpson *v.* Clarke, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 703.

No. 19–8874. Scully *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 951 F. 3d 656.

No. 19–8876. Jalloh *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 787 Fed. Appx. 409.

No. 19–8877. Lomas *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 274.

No. 19–8878. Richardson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 948 F. 3d 733.

No. 19–8879. Sekhon *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 19–8880. Harman *v.* Zatecky, Superintendent, Pendleton Correctional Facility. C. A. 7th Cir. Certiorari denied.

No. 19–8881. Foote *v.* Indiana. Ct. App. Ind. Certiorari denied. Reported below: 135 N. E. 3d 168.

No. 19–8882. Hatt *v.* Washington. Ct. App. Wash. Certiorari denied. Reported below: 11 Wash. App. 2d 113, 452 P. 3d 577.

No. 19–8883. Gundy *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 19–8884. GRAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 19–8885. CADENAS-URENA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 287.

No. 19–8886. ERICKSON *v.* COLLINS, JUDGE, SUPERIOR COURT OF ARIZONA, COCHISE COUNTY, ET AL. Sup. Ct. Ariz. Certiorari denied.

No. 19–8887. PENA-RIVERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 719.

No. 19–8888. OVIEDO *v.* WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY. C. A. D. C. Cir. Certiorari denied. Reported below: 948 F. 3d 386.

No. 19–8890. HODGE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 948 F. 3d 160.

No. 19–8891. HOWARD *v.* MANAGEMENT & TRAINING CORP. ET AL. Ct. App. Ohio, 3d App. Dist., Marion County. Certiorari denied. Reported below: 2019-Ohio-4408.

No. 19–8892. PEREZ-CUBERTIER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 958 F. 3d 81.

No. 19–8893. HENRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 19–8894. HALLIBURTON *v.* BOARD OF PROFESSIONAL RESPONSIBILITY; and HALLIBURTON *v.* TENNESSEE BOARD OF JUDICIAL CONDUCT. Sup. Ct. Tenn. Certiorari denied.

No. 19–8895. RODRIGUEZ *v.* LAWSON, JUSTICE, SUPREME COURT OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 19–8896. REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 262.

No. 19–8897. SMITH *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 374 N. C. 751, 842 S. E. 2d 596.

No. 19–8901. FUENTES ROSAS *v.* FILSON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 785 Fed. Appx. 373.

No. 19–8902. PATINO-VILLALOBOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 19–8906. KINARD *v.* HOFFMAN ET AL. C. A. 11th Cir. Certiorari denied.

No. 19–8907. BOYER *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 19–8908. POPE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 934 F. 3d 770.

No. 19–8909. HAZE *v.* POOLE, ADMINISTRATOR, SCOTLAND CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 777 Fed. Appx. 74.

No. 19–8911. THOMPSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 792 Fed. Appx. 338.

No. 19–8912. ARCE-CALDERON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 954 F. 3d 379.

No. 19–8913. ABBASSI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 484.

No. 19–8914. FERGUSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 19–8915. GLASSGOW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 19–8916. HAMILTON *v.* RAMEY, WARDEN. Sup. Ct. Mo. Certiorari denied.

No. 19–8917. HALE *v.* INDIANA DEPARTMENT OF CHILD SERVICES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 784 Fed. Appx. 956.

No. 19–8918. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 789 Fed. Appx. 105.

No. 19–8919. CLEVENGER *v.* PHILLIPS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 19–8920. COLBERT *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 19–8922. CRAKER *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 19–8923. LEGGETT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 378.

No. 19–8925. LUNDBERG *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 725.

No. 19–8926. CLEMENTE GOVEA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 423.

No. 19–8927. MITCHELL *v.* SHARP, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 183.

No. 19–8928. CAMPOS-LAGUNAS, AKA LOPEZ-LOMALI, AKA ORTIZ, AKA LAGUNAS CAMPOS, AKA GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 304.

No. 19–8930. DUNAHUE *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 791 Fed. Appx. 628.

No. 20–1. DAVIS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied.

No. 20–2. VALENTIN *v.* CITY OF ROCHESTER, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 783 Fed. Appx. 97.

No. 20–3. BALVIN *v.* RAIN & HAIL, LLC. C. A. 8th Cir. Certiorari denied. Reported below: 943 F. 3d 1134.

No. 20–4. WOODROOF *v.* CUNNINGHAM ET AL. Ct. App. D. C. Certiorari denied. Reported below: 221 A. 3d 917.

No. 20–6. BURKE *v.* PROGRESSIVE GULF INSURANCE COMPANY. C. A. 4th Cir. Certiorari denied. Reported below: 791 Fed. Appx. 432.

No. 20–7. BERKA *v.* CITY OF MIDDLETOWN, CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 195 Conn. App. 760, 227 A. 3d 78.

No. 20–9. PURI ET AL. *v.* KHALSA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 788 Fed. Appx. 563.

No. 20–12. SPEER *v.* SEAPORT CAPITAL PARTNERS, LLC. App. Ct. Conn. Certiorari denied.

No. 20–13. LAVERGNE *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 780 Fed. Appx. 165.

No. 20–15. PENNYMAC FINANCIAL SERVICES, INC., ET AL. *v.* HEIDRICH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 792 Fed. Appx. 540.

No. 20–16. BINNS *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 305.

No. 20–17. ROBERTSON *v.* HONN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 781 Fed. Appx. 640.

No. 20–21. FLESHNER *v.* TIEDT ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 956.

No. 20–24. GREAT LAKES MINERALS, LLC *v.* OHIO ET AL. Sup. Ct. Ky. Certiorari denied. Reported below: 597 S. W. 3d 169.

No. 20–25. RODRIGUEZ *v.* VIRGINIA STATE BAR DISCIPLINARY BOARD. Sup. Ct. Va. Certiorari denied.

No. 20–29. DISCEPOLO *v.* DEPARTMENT OF JUSTICE. C. A. D. C. Cir. Certiorari denied.

No. 20–30. MARTIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 949 F. 3d 662.

No. 20–32. MORSA *v.* IANCU, DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 809 Fed. Appx. 913.

No. 20–33. GRACE INTERNATIONAL ASSEMBLY OF GOD *v.* FESTA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 797 Fed. Appx. 603.

No. 20–34. GRIMES *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 20–35. FRANKEL *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 176.

No. 20–36. MCGOWAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 20–41. WEXLER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 425.

No. 20–42. Solares Mijangos *v.* Barr, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 588.

No. 20–43. Reich et al. *v.* City of Elizabethtown, Kentucky, et al. C. A. 6th Cir. Certiorari denied. Reported below: 945 F. 3d 968.

No. 20–46. Port of Corpus Christi Authority of Nueces County, Texas *v.* Sherwin Alumina Co., LLC, et al. C. A. 5th Cir. Certiorari denied. Reported below: 952 F. 3d 229.

No. 20–49. Myma *v.* Wroe. Sup. Ct. Ind. Certiorari denied.

No. 20–51. Benevides *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 20–52. Aponte-Bermudez *v.* Colon et al. C. A. 1st Cir. Certiorari denied. Reported below: 944 F. 3d 963.

No. 20–55. Anderson *v.* American General Life Insurance Co. C. A. 11th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 548.

No. 20–56. Wen Chiann Yeh *v.* North Carolina State University et al. C. A. 4th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 154.

No. 20–59. Campbell *v.* Bennett et al. C. A. 4th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 144.

No. 20–61. Orie Melvin *v.* Zappala et al. C. A. 3d Cir. Certiorari denied. Reported below: 798 Fed. Appx. 706.

No. 20–63. Pierce *v.* Yale University et al. C. A. D. C. Cir. Certiorari denied. Reported below: 788 Fed. Appx. 1.

No. 20–64. McMahon et al. *v.* Hartzell et al. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 3d 266.

No. 20–65. Reinhaus *v.* Zoning Board of Appeals of Cincinnati. Ct. App. Ohio, 1st App. Dist., Hamilton County. Certiorari denied.

No. 20–66. G&M Realty L. P. et al. *v.* Castillo et al. C. A. 2d Cir. Certiorari denied. Reported below: 950 F. 3d 155.

No. 20–67. Smith *v.* County of Los Angeles, California, et al. C. A. 9th Cir. Certiorari denied.

No. 20–68. CHEETAH OMNI LLC *v.* AT&T SERVICES, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 949 F. 3d 691.

No. 20–69. FULLER, AS SUCCESSOR PERSONAL REPRESENTATIVE OF THE ESTATE OF FULLER *v.* BANCO BILBAO VIZCAYA ARGENTARIA, S. A. C. A. 2d Cir. Certiorari denied. Reported below: 946 F. 3d 120.

No. 20–70. MAHADEVAN *v.* BIKKINA. Ct. App. Cal., 1st App. Dist., Div. 4. Certiorari denied.

No. 20–71. BROWN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 20–72. HIMSEL ET AL. *v.* 4/9 LIVESTOCK, LLC, ET AL. Ct. App. Ind. Certiorari denied. Reported below: 122 N. E. 3d 935.

No. 20–73. IV SOLUTIONS, INC. *v.* PACIFICARE LIFE & HEALTH INSURANCE CO. C. A. 9th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 497.

No. 20–75. HESTON *v.* G. B. CAPITAL HOLDINGS, LLC. C. A. 9th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 304.

No. 20–76. HAGE *v.* MHANNA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 20–77. IVEY *v.* CORCORAN. Sup. Ct. Fla. Certiorari denied.

No. 20–79. DANIELS *v.* DAVEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 20–80. BLODGETT ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 792 Fed. Appx. 921.

No. 20–81. BERBER *v.* WELLS FARGO BANK, N. A., ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–84. CANUTO *v.* ALEXANDER ET AL. C. A. D. C. Cir. Certiorari denied.

No. 20–85. DIMPS *v.* TACONIC CORRECTIONAL FACILITY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 802 Fed. Appx. 601.

No. 20–87. NOBLES *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 373 N. C. 471, 838 S. E. 2d 373.

No. 20–89. RHODES *v.* SMITH, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 950 F. 3d 1032.

No. 20–90. SLONE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 20–91. MARTIN *v.* DEPARTMENT OF HOMELAND SECURITY. C. A. Fed. Cir. Certiorari denied. Reported below: 810 Fed. Appx. 867.

No. 20–93. DOE, A MINOR CHILD WHO IS UNBORN, BY AND THROUGH HER FATHER AND NEXT FRIEND, DOE *v.* HUNTER, ATTORNEY GENERAL OF OKLAHOMA, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 532.

No. 20–94. DEKOM *v.* NATIONSTAR MORTGAGE, LLC. Ct. App. N. Y. Certiorari denied. Reported below: 35 N. Y. 3d 957, 147 N. E. 3d 1158.

No. 20–95. HICKS-WASHINGTON *v.* HOUSING AUTHORITY OF THE CITY OF FORT LAUDERDALE. C. A. 11th Cir. Certiorari denied.

No. 20–99. SCHUCHARDT *v.* TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 802 Fed. Appx. 69.

No. 20–103. STOCKMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 947 F. 3d 253.

No. 20–104. SMITH *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 6 Wash. App. 2d 1027.

No. 20–108. POUPART *v.* LANDRY, ATTORNEY GENERAL OF LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 299.

No. 20–110. KANNRY ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 788 Fed. Appx. 88.

No. 20–113. HAMMANN *v.* WELLS FARGO BANK, N. A. (two judgments). Ct. App. Minn. Certiorari denied.

No. 20–115. KINNEY *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Certiorari denied.

No. 20–116. Robles Rodriguez *v.* Andrew M. Saul, Commissioner of Social Security. C. A. 9th Cir. Certiorari denied.

No. 20–117. Sequeira *v.* Republic of Nicaragua et al. C. A. 9th Cir. Certiorari denied. Reported below: 791 Fed. Appx. 681.

No. 20–118. Greer *v.* General Dynamics Information Technology, Inc. C. A. 4th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 191.

No. 20–119. Ruggiero *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 20–121. Spiegal *v.* Kim. C. A. 7th Cir. Certiorari denied. Reported below: 952 F. 3d 844.

No. 20–123. Rheinstein *v.* Attorney Grievance Commission of Maryland. Ct. App. Md. Certiorari denied. Reported below: 466 Md. 648, 223 A. 3d 505.

No. 20–127. Way *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 504.

No. 20–129. Badawi *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 621.

No. 20–130. Hung Dang *v.* Washington Department of Health, Medical Quality Assurance Commission. Ct. App. Wash. Certiorari denied. Reported below: 10 Wash. App. 2d 650, 450 P. 3d 1189.

No. 20–133. Diaz *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 685.

No. 20–137. McCurdy *v.* Maine. Sup. Jud. Ct. Me. Certiorari denied.

No. 20–143. Lowman *v.* United States. C. A. 4th Cir. Certiorari denied.

No. 20–145. Skidmore *v.* Lizarraga, Warden. C. A. 9th Cir. Certiorari denied.

No. 20–146. Benavides *v.* Texas. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 20–155. NEW ENGLAND TEAMSTERS AND TRUCKING INDUSTRY PENSION FUND *v.* SUN CAPITAL PARTNERS III, LP, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 943 F. 3d 49.

No. 20–158. SRAM, LLC *v.* FOX FACTORY, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 944 F. 3d 1366.

No. 20–160. HALIM *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 813 Fed. Appx. 482.

No. 20–162. CLAIBORNE *v.* MCCARTHY, SECRETARY OF THE ARMY. C. A. 9th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 128.

No. 20–167. MICHELSON *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 812 Fed. Appx. 995.

No. 20–169. METSCH *v.* HAJDASZ. C. A. 11th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 884.

No. 20–173. HEFFLIN ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 334.

No. 20–174. BAEHR ET UX. *v.* CREIG NORTHROP TEAM, P. C., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 953 F. 3d 244.

No. 20–181. MILES *v.* SVINICKI ET AL. C. A. 7th Cir. Certiorari denied.

No. 20–189. BARNES *v.* STANGE, WARDEN. Sup. Ct. Mo. Certiorari denied.

No. 20–191. SILVA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 787.

No. 20–198. WILLIAMS *v.* CITY OF SHERWOOD, ARKANSAS. C. A. 8th Cir. Certiorari denied. Reported below: 947 F. 3d 1107.

No. 20–203. DEGAN ET AL. *v.* BOARD OF TRUSTEES OF THE DALLAS POLICE AND FIRE PENSION SYSTEM. C. A. 5th Cir. Certiorari denied. Reported below: 956 F. 3d 813.

No. 20–205. Z. B., By and Through His Mother, Sanchez *v.* District of Columbia. C. A. D. C. Cir. Certiorari denied. Reported below: 815 Fed. Appx. 559.

No. 20–206. Albritten *v.* California Department of Forestry and Fire Protection et al. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 20–214. Fard *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 618.

No. 20–221. Flores de Freitas *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 945 F. 3d 687.

No. 20–226. Ratliff *v.* Aransas County, Texas, et al. C. A. 5th Cir. Certiorari denied. Reported below: 948 F. 3d 281.

No. 20–238. Changzhou Sinotype Technology Co., Ltd. *v.* Rockefeller Technology Investments (Asia) VII. Sup. Ct. Cal. Certiorari denied. Reported below: 9 Cal. 5th 125, 460 P. 3d 764.

No. 20–266. Bieganski *v.* Arizona. Ct. App. Ariz. Certiorari denied.

No. 20–282. Carmon *v.* CSX Transportation, Inc. C. A. 6th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 395.

No. 20–286. United States ex rel. Janssen, as Special Administrator of the Estate of Duffy *v.* Lawrence Memorial Hospital. C. A. 10th Cir. Certiorari denied. Reported below: 949 F. 3d 533.

No. 20–292. Pinder *v.* Crowther, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 165.

No. 20–5001. Norris *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 20–5002. Ayun-Flores *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 549.

No. 20–5004. Zeroni *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 950.

No. 20–5005. Williams *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 379.

No. 20–5006. OLIVAS-GUEVARA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–5007. FOLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 3d 681.

No. 20–5008. GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 305.

No. 20–5009. WIGGINS *v.* GOLDEN CORRAL CORP. C. A. 5th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 812.

No. 20–5010. WARNER *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 400 Mont. 556, 461 P. 3d 144.

No. 20–5011. WANNIARACHCHI *v.* BARR, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 776 Fed. Appx. 167.

No. 20–5013. NEWSON *v.* SUPERIOR COURT OF CALIFORNIA, PIMA COUNTY, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 784 Fed. Appx. 964.

No. 20–5014. PERALTA *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 268 N. C. App. 260, 836 S. E. 2d 254.

No. 20–5015. SUMTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 195.

No. 20–5016. BUTLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 949 F. 3d 230.

No. 20–5017. MODISETTE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 241.

No. 20–5018. MIDDLETON *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 20–5019. BARRERA-VELASQUEZ, AKA BARRERA, AKA VELASQUEZ BARRERA, AKA VELASQUEZ-BARRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 372.

No. 20–5020. ALLEN *v.* TRI-LIFT NORTH CAROLINA, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 245.

No. 20–5021. ALLEN *v.* NORTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 246.

No. 20–5022. ALLEN *v.* GLINES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 247.

No. 20–5023. ANDERSON *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 297.

No. 20–5024. BROWN *v.* WILLIAMS, CLERK, SUPERIOR COURT OF NORTH CAROLINA, WAKE COUNTY. C. A. 4th Cir. Certiorari denied. Reported below: 788 Fed. Appx. 194.

No. 20–5025. AMOS *v.* BOWEN. C. A. 11th Cir. Certiorari denied.

No. 20–5026. ARBAUGH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 951 F. 3d 167.

No. 20–5027. ALLRED *v.* UTTECHT, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 20–5031. RAMIREZ-ARROYO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 20–5033. MARRON, AKA MU'MIN *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 804.

No. 20–5034. MARTIN *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 20–5035. MCLENDON ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 780 Fed. Appx. 738.

No. 20–5036. PERRY *v.* WOODS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5038. OLANGIAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 803 Fed. Appx. 536.

No. 20–5039. SPENCER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–5041. SAIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 794 Fed. Appx. 511.

No. 20–5042. SILVA-AGUILAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 20–5043. RIZK *v.* DEFENSE FINANCE AND ACCOUNTING SERVICE. C. A. 6th Cir. Certiorari denied.

No. 20–5044. LIVIZ *v.* SUPREME JUDICIAL COURT OF MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 484 Mass. 1039, 144 N. E. 3d 284.

No. 20–5048. BOWMAN *v.* BOYD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5049. MARTIN *v.* GALIPEAU, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 444.

No. 20–5050. LESLIE *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 20–5051. STAGGERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 961 F. 3d 745.

No. 20–5052. LEWIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 20–5053. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 243.

No. 20–5054. DAVIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 572.

No. 20–5055. CASTELLANOS MURATELLA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 956 F. 3d 541.

No. 20–5056. CORTEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 775 Fed. Appx. 773.

No. 20–5057. CHAVEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 951 F. 3d 349.

No. 20–5058. ESTEVEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 961 F. 3d 519.

No. 20–5059. GOODIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 20–5061. EMIABATA *v.* BB&T ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 774 Fed. Appx. 816.

No. 20–5062. Byrd *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 272 So. 3d 1289.

No. 20–5063. Blackburn *v.* Saul, Commissioner of Social Security. C. A. 6th Cir. Certiorari denied.

No. 20–5065. Bogle *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 288 So. 3d 1065.

No. 20–5066. Spillard *v.* Superior Court of California, Humboldt County, et al. Sup. Ct. Cal. Certiorari denied.

No. 20–5067. Riggs *v.* Cassady, Warden. C. A. 8th Cir. Certiorari denied.

No. 20–5068. Li Qin *v.* Kong-Brown et al. C. A. 9th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 581.

No. 20–5069. Rosado-Sanchez *v.* Banco Santander Puerto Rico. C. A. 1st Cir. Certiorari denied.

No. 20–5070. Rams *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 20–5071. Moran *v.* Florida. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 20–5073. Martinez-Hernandez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 434.

No. 20–5076. Ceja-Valdez *v.* United States. C. A. 9th Cir. Reported below: 777 Fed. Appx. 244.

No. 20–5077. Cipriano-Ortega *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 596.

No. 20–5078. Adzhemyan *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 77.

No. 20–5079. Finchum *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 316.

No. 20–5080. Wiggin *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 320.

No. 20–5081. Hoffert *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 949 F. 3d 782.

No. 20–5082. SCHWARTZ *v.* MADDEN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 20–5083. KAVANTZAS *v.* FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 999.

No. 20–5084. ELLIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 789 Fed. Appx. 163.

No. 20–5086. CALHOUN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 20–5088. PONCE-MARES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–5092. CORTEZ-HERNANDEZ *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 20–5093. CLAYBORN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 951 F. 3d 937.

No. 20–5095. CLAIRVOYANT *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–5097. WILKERSON *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 20–5098. TSUKERMAN *v.* WESTERN COMMUNITY UNIT SCHOOL DISTRICT NO. 12. C. A. 7th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 312.

No. 20–5099. WILSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 450.

No. 20–5101. VISAGE *v.* WOODALL ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 406.

No. 20–5102. HAILE *v.* CONTEH. Sup. Ct. Va. Certiorari denied.

No. 20–5103. HAILE *v.* KAISER PERMANENTE TYSONS CORNER. C. A. 4th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 114.

No. 20–5104. TAPP *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 791 Fed. Appx. 400.

No. 20–5105. TEMPLE *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 20–5106. WHITTEN *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 20–5107. MONTGOMERY *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 227 A. 3d 1062.

No. 20–5108. OJEDA-AMARILLAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 607.

No. 20–5109. OTGOO *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2019 IL App (1st) 153346.

No. 20–5110. CARDONA-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–5111. SANDERS *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 20–5112. ROBINSON *v.* POLIS, GOVERNOR OF COLORADO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 619.

No. 20–5113. ROBERTSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 946 F. 3d 1168.

No. 20–5114. ROMERO-OCHOA *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 193 Wash. 2d 341, 440 P. 3d 994.

No. 20–5115. SERRANO-RAMIREZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 327.

No. 20–5116. ANDERSON *v.* WINN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5117. RODGERS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 288 So. 3d 1038.

No. 20–5120. COTTO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 957 F. 3d 122.

No. 20–5121. GUTIERREZ-DIAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 792 Fed. Appx. 512.

No. 20–5122. Flores-Lezama *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 623.

No. 20–5127. Espinoza *v.* Colorado et al. C. A. 10th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 254.

No. 20–5128. Chapman *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 20–5129. Sheer *v.* Warren, Warden. C. A. 6th Cir. Certiorari denied.

No. 20–5130. Lozano Solis *v.* Shinn, Director, Arizona Department of Corrections, et al. C. A. 9th Cir. Certiorari denied.

No. 20–5131. Kimbrew *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 944 F. 3d 810.

No. 20–5134. Barren *v.* Daniels, Director, Nevada Department of Corrections, et al. C. A. 9th Cir. Certiorari denied.

No. 20–5135. Bowell *v.* State Bar of California. Sup. Ct. Cal. Certiorari denied.

No. 20–5137. Myles *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 184.

No. 20–5139. Jones *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 801 Fed. Appx. 38.

No. 20–5140. Torres *v.* City of New York, New York, et al. C. A. 2d Cir. Certiorari denied.

No. 20–5141. Williford *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 794 Fed. Appx. 332.

No. 20–5142. Ward *v.* Corizon. C. A. 9th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 825.

No. 20–5143. Ward *v.* Idaho et al. C. A. 9th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 823.

No. 20–5144. Levatte *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 658.

No. 20–5146. Warenback *v.* Neven, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 20–5147. TAEBEL *v.* ORTEGA ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–5148. WOOD *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 20–5149. MALACHOWSKI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 20–5150. JENKINS *v.* CLARKE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 20–5151. REED *v.* PARAMO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 20–5152. ARREDONDO-MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 794 Fed. Appx. 446.

No. 20–5153. SIMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 957 F. 3d 362.

No. 20–5154. HERRERA SALGUERO *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 20–5156. CONTRERAS SAUCEDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 794 Fed. Appx. 437.

No. 20–5158. SILVERS *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–5159. ROYBAL *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 20–5160. HENDERSON *v.* MILES, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 20–5161. GONZALEZ-GATICA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 794 Fed. Appx. 436.

No. 20–5162. TERRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 20–5163. WELSH *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 20–5164. WELSH *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 20–5165. WELSH *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 20–5167. MCINTOSH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 20–5168. WILSON *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied.

No. 20–5169. THOMAS *v.* OHIO. Ct. App. Ohio, 9th App. Dist., Summit County. Certiorari denied. Reported below: 2019-Ohio-4247.

No. 20–5170. WILLIAMS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 20–5171. WATKINS *v.* HUTCHISON, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 20–5173. DOMINGO VELAZQUEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 20–5174. THOMAS *v.* MUNIZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 376.

No. 20–5175. WILSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 20–5176. HARRIS *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 20–5177. FELIX-CARRAZCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 441.

No. 20–5178. FERNETUS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 712.

No. 20–5179. GUILLEN *v.* MCTIGHE ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–5181. CHONGNENGWT VANG *v.* SAUL, COMMISSIONER OF SOCIAL SECURITY. C. A. 7th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 398.

No. 20–5182. WILLIAMS *v.* WELLS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 242.

No. 20–5183. HOGLUND *v.* NEAL, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 959 F. 3d 819.

No. 20–5185. NELSON *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 20–5186. BUTLER *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied.

No. 20–5187. BRENNAN *v.* STEIN, ATTORNEY GENERAL OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 775.

No. 20–5188. BARNES *v.* DOWLING, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 559.

No. 20–5190. RODRIGUEZ *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA, RENO, ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–5191. EDWARDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 795 Fed. Appx. 275.

No. 20–5192. MOSER *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 382.

No. 20–5193. MCWHORTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 794 Fed. Appx. 298.

No. 20–5195. CARRASCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 275.

No. 20–5196. MCCONNELL *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 298 So. 3d 1145.

No. 20–5197. MOORE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 20–5199. SIMMS *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 20–5200. SANFORD *v.* TENNESSEE DEPARTMENT OF CORRECTION ET AL. Ct. App. Tenn. Certiorari denied.

No. 20–5201. CRAWFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 758.

No. 20–5203. JIM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 895.

No. 20–5204. LERNER *v.* COWEN. Ct. App. Cal., 2d App. Dist., Div. 2. Certiorari denied.

No. 20–5205. LEWIS *v.* JOYNER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5206. KNUTH *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 20–5207. LONG *v.* JAIME, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 20–5208. JONES *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 251.

No. 20–5210. DUNN *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 778.

No. 20–5211. DOBSON *v.* STOLLE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 794 Fed. Appx. 281.

No. 20–5213. CODY, AKA THOMPSON *v.* SLUSHER ET AL. C. A. 6th Cir. Certiorari denied.

No. 20–5214. HAYNES *v.* WILKIE, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 789 Fed. Appx. 218.

No. 20–5215. LANG *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 305 Neb. 726, 942 N. W. 2d 388.

No. 20–5218. PAGE *v.* BAKER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–5219. BINH NGUYEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 795 Fed. Appx. 277.

No. 20–5220. GROOMES *v.* ARKANSAS. Ct. App. Ark. Certiorari denied. Reported below: 2019 Ark. App. 408, 586 S. W. 3d 196.

No. 20–5221. MARTIN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 311 So. 3d 778.

No. 20–5222. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 795 Fed. Appx. 278.

No. 20–5223. MADRID-URIARTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 795 Fed. Appx. 287.

No. 20–5224. CLARK *v.* DIAZ, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 777 Fed. Appx. 185.

No. 20–5225. ALEXANDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 795 Fed. Appx. 220.

No. 20–5226. FLORES-DOMINGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 795 Fed. Appx. 310.

No. 20–5227. HERNANDEZ-MEDRANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 795 Fed. Appx. 303.

No. 20–5231. S. T. ET AL. *v.* VERMONT DEPARTMENT FOR CHILDREN AND FAMILIES ET AL. Sup. Ct. Vt. Certiorari denied. Reported below: 2020 VT 3, 227 A. 3d 504.

No. 20–5232. ANDERSON *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–5233. BURNS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 20–5234. BRYANT *v.* DISTRICT OF COLUMBIA OFFICE OF HUMAN RIGHTS ET AL. Ct. App. D. C. Certiorari denied.

No. 20–5238. HAYES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 811 Fed. Appx. 30.

No. 20–5239. GRIFFIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 811 Fed. Appx. 683.

No. 20–5240. GILMORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 963 F. 3d 320.

No. 20–5241. POTTS *v.* GARZA. C. A. 9th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 554.

No. 20–5242. MILES *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION CORRECTIONAL OFFICERS ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–5244. LOPEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 957 F. 3d 302.

No. 20–5245. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 702.

No. 20–5246. LUKE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 20–5247. BURNSIDE *v.* REWERTS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5248. BERNAL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 20–5250. AVILA-JAIMES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 301.

No. 20–5251. HARRIOT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 795 Fed. Appx. 215.

No. 20–5252. GRACE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 786.

No. 20–5253. FARRAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 788 Fed. Appx. 483.

No. 20–5255. MASHAK *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied.

No. 20–5257. MOORE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 411.

No. 20–5258. HUNTER *v.* GOVERNMENT EMPLOYEES INSURANCE CO. C. A. 4th Cir. Certiorari denied. Reported below: 777 Fed. Appx. 697.

No. 20–5259. WHO *v.* DEPARTMENT OF THE TREASURY. C. A. 9th Cir. Certiorari denied.

No. 20–5262. HENDERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–5265. SAYED *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 20–5267. RICHARDSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 958 F. 3d 151.

No. 20–5268. RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 166.

No. 20–5272. WASHINGTON *v.* CHAPMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5273. HARGETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 765.

No. 20–5274. HARRIS *v.* KORNEMAN, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 20–5276. THOMPSON *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 942 N. W. 2d 350.

No. 20–5280. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 848.

No. 20–5281. ROBINSON, AKA MOORE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 20–5283. LEMUS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 266.

No. 20–5284. LAM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 796.

No. 20–5286. RODRIGUEZ INFANTE *v.* MARTEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 953 F. 3d 560.

No. 20–5290. PEREZ, AKA VALDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 124.

No. 20–5291. JOHNSON *v.* MARLAR. C. A. 10th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 791.

No. 20–5292. CHAUDHARI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 795 Fed. Appx. 297.

No. 20–5293. BATES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 217.

No. 20–5294. BECTON *v.* PHILLIPS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5299. BENSON *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 600 S. W. 3d 896.

No. 20–5300. SANTANA-GONZALEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 20–5301. SHANKS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 962 F. 3d 317.

No. 20–5302. GONGORA-BALTAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 597.

No. 20–5306. HORRELL *v.* GOMEZ, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 20–5309. HARRIOT *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 788 Fed. Appx. 226.

No. 20–5312. BROWN *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 253.

No. 20–5315. STABNOW *v.* HARPSTEAD, COMMISSIONER, MINNESOTA DEPARTMENT OF HUMAN SERVICES. C. A. 8th Cir. Certiorari denied.

No. 20–5317. RODGERS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 292 So. 3d 434.

No. 20–5319. AVILA-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–5320. BURKS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 20–5321. WADENA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–5323. WRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 774 Fed. Appx. 127.

No. 20–5325. WOODARD *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 20–5326. ALONSO GARCIA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 946 F. 3d 413.

No. 20–5327. HUGGINS *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 20–5329. SCYPHERS *v.* WASHINGTON. C. A. 9th Cir. Certiorari denied.

No. 20–5334. KIEREN *v.* FORD, ATTORNEY GENERAL OF NEVADA. C. A. 9th Cir. Certiorari denied.

No. 20–5335. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 329.

No. 20–5337. MEZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 463.

No. 20–5338. MCCANTS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 952 F. 3d 416.

No. 20–5339. JENNINGS *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 305 Neb. 809, 942 N. W. 2d 753.

No. 20–5340. MAJID *v.* CENTRAL INTELLIGENCE AGENCY. C. A. 4th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 143.

No. 20–5343. BROME *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 942 F. 3d 550.

No. 20–5345. TAYLOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 731.

No. 20–5346. THOMPSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 169.

No. 20–5347. MCCANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 859.

No. 20–5348. MILLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 963.

No. 20–5351. WADE *v.* WILLIAMS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 20–5353. WRIGHT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 20–5357. COLLYMORE *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 334 Conn. 431, 223 A. 3d 1.

No. 20–5358. FUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–5359. EUSTICE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 952 F. 3d 686.

No. 20–5361. TORRES-MARQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 829.

No. 20–5362. ALLEN *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 953 F. 3d 858.

No. 20–5364. KAMINSKI *v.* SEMPLE, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 796 Fed. Appx. 36.

No. 20–5369. FARMER *v.* BOOKER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 791 Fed. Appx. 415.

No. 20–5372. GAMAGE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 20–5373. HAWKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 20–5376. ESTRADA-EUGENIO, AKA MEDINA, AKA ESTARADA, AKA EUGENIO-ESTRADA, AKA AMEZQUITA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 884.

No. 20–5377. BUCKLES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 785.

No. 20–5380. PITT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 778.

No. 20–5382. GRAHAM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–5385. HARMON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 836.

No. 20–5388. BUCK *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 20–5389. BAYISA *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 20–5390. BETTS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 426.

No. 20–5391. LAMBERT *v.* PAERSSON. C. A. 9th Cir. Certiorari denied.

No. 20–5392. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 953 F. 3d 433.

No. 20–5393. MCCULLOUGH *v.* DENNISON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 20–5394. MONA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 871.

No. 20–5402. SAVICKI *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 20–5403. SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 143.

No. 20–5405. HARDY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 718.

No. 20–5408. JODOIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 394.

No. 20–5409. KEEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 819 Fed. Appx. 735.

No. 20–5410. APARICIO-LEON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 963 F. 3d 470.

No. 20–5411. ANDERSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 804 Fed. Appx. 101.

No. 20–5412. BLUEW *v.* HORTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5415. LONG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–5418. VELOZ, AKA RIVERA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 948 F. 3d 418.

No. 20–5423. PERALTA-CASTRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 291.

No. 20–5424. HANZY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 191.

No. 20–5427. PORTER *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 2019 IL App (4th) 170546–U.

No. 20–5428. MORALES-MERCADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 907.

No. 20–5429. NEVILLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 784 Fed. Appx. 950.

No. 20–5432. BARNES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 953 F. 3d 383.

No. 20–5433. WIND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 887.

No. 20–5435. LLOYD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 750.

No. 20–5436. SANTIAGO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 220.

No. 20–5437. TAYLOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–5439. SANTIBANEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 207.

No. 20–5440. TEJADA *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 484 Mass. 1, 143 N. E. 3d 397.

No. 20–5441. SAUNDERS *v.* GARMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 20–5442. SMITH *v.* DEPARTMENT OF EDUCATION ET AL. C. A. 7th Cir. Certiorari denied.

No. 20–5444. SANDERS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 800 Fed. Appx. 919.

No. 20–5445. WALKER *v.* SHELDON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5446. ZHENG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 20–5450. WASHINGTON *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 296 So. 3d 567.

No. 20–5457. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 960 F. 3d 883.

No. 20–5470. MILLA-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 835.

No. 20–5472. DAILEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–5473. CHAVEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 390.

No. 20–5474. CLAYTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 50.

No. 20–5478. HERNANDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 20–5479. MONDRAGON BENITEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 243.

No. 20–5481. BROWN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 810 Fed. Appx. 105.

No. 20–5488. LOPEZ TOALA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 804.

No. 20–5490. PAYTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 959 F. 3d 654.

No. 20–5527. BENTON *v.* CAPOZZA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 19–847. REISMAN *v.* ASSOCIATED FACULTIES OF THE UNIVERSITY OF MAINE ET AL. C. A. 1st Cir. Motion of Freedom Foundation for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 939 F. 3d 409.

No. 19–926. DAVIS *v.* ERMOLD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 936 F. 3d 429.

Statement of JUSTICE THOMAS, with whom JUSTICE ALITO joins, respecting the denial of certiorari.

In *Obergefell* v. *Hodges*, 576 U. S. 644 (2015), the Court read a right to same-sex marriage into the Fourteenth Amendment, even though that right is found nowhere in the text. Several Members of the Court noted that the Court's decision would threaten the religious liberty of the many Americans who believe that marriage is a sacred institution between one man and one woman. If the States had been allowed to resolve this question through legislation, they could have included accommodations for those

who hold these religious beliefs. *Id.*, at 711 (ROBERTS, C. J., dissenting); *id.*, at 734 (THOMAS, J., dissenting). The Court, however, bypassed that democratic process. Worse still, though it briefy acknowledged that those with sincerely held religious objections to same-sex marriage are often "decent and honorable," *id.*, at 672, the Court went on to suggest that those beliefs espoused a bigoted worldview, *ibid.* See also *id.*, at 670 (noting that such a view of marriage is "demean[ing]" to gays and lesbians because it "teach[es] that gays and lesbians are unequal"); *id.*, at 671 (describing the view of marriage dictated by the religious beliefs of many as "impos[ing] stigma and injury"); *id.*, at 675 (characterizing the traditional view of marriage as "disrespect-[ful]" to gays and lesbians). The dissenting Justices predicted that "[t]hese . . . assaults on the character of fairminded people will have an effect, in society and in court," *id.*, at 712 (opinion of ROBERTS, C. J.), allowing "governments, employers, and schools" to "vilify" those with these religious beliefs "as bigots," *id.*, at 741 (opinion of ALITO, J.). Those predictions did not take long to become reality.

Kim Davis, a former county clerk in the Commonwealth of Kentucky, was responsible for authorizing marriage licenses. Davis is also a devout Christian. When she began her tenure as clerk, Davis' sincerely held religious beliefs—that marriage exists between one man and one woman—corresponded with the def nition of marriage under Kentucky law. See Ky. Rev. Stat. § 402.005 (1998); Ky. Const. § 233A (2004). Within weeks of this Court granting certiorari in *Obergefell*, Davis began lobbying for amendments to Kentucky law that would protect the free exercise rights of those who had religious objections to same-sex marriage. But those efforts were cut short by this Court's decision in *Obergefell*.

As a result of this Court's alteration of the Constitution, Davis found herself faced with a choice between her religious beliefs and her job. When she chose to follow her faith, and without any statutory protection of her religious beliefs, she was sued almost immediately for violating the constitutional rights of same-sex couples.

Davis may have been one of the frst victims of this Court's cavalier treatment of religion in its *Obergefell* decision, but she will not be the last. Due to *Obergefell*, those with sincerely held religious beliefs concerning marriage will f nd it increasingly dif-

fcu lt to participate in society without running afoul of *Obergefell* and its effect on other antidiscrimination laws. It would be one thing if recognition for same-sex marriage had been debated and adopted through the democratic process, with the people deciding not to provide statutory protections for religious liberty under state law.* But it is quite another when the Court forces that choice upon society through its creation of atextual constitutional rights and its ungenerous interpretation of the Free Exercise Clause, leaving those with religious objections in the lurch.

Moreover, *Obergefell* enables courts and governments to brand religious adherents who believe that marriage is between one man and one woman as bigots, making their religious liberty concerns that much easier to dismiss. For example, relying on *Obergefell*, one member of the Sixth Circuit panel in this case described Davis' sincerely held religious beliefs as "anti-homosexual animus." 936 F. 3d 429, 438 (2019) (Bush, J., concurring in part and concurring in judgment). In other words, *Obergefell* was read to suggest that being a public offcia l with traditional Christian values was legally tantamount to invidious discrimination toward homosexuals. This assessment fows directly from *Obergefell*'s language, which characterized such views as "disparag[ing]" homosexuals and "diminish[ing] their personhood" through "[d]ignitary wounds." 576 U. S., at 672, 678. Since *Obergefell*, parties have continually attempted to label people of good will as bigots merely for refusing to alter their religious beliefs in the wake of prevailing orthodoxy. See *Campaign for Southern Equality* v. *Bryant*, 197 F. Supp. 3d 905, 910 (SD Miss. 2016) (recognizing the plaintiffs' argument equating an accommodation allowing religious objectors to recuse themselves from signing same-sex licenses with impermissible discrimination); *Brush & Nib Studio, LC* v. *Phoenix*, 244 Ariz. 59, 66, 418 P. 3d 426, 434 (App. 2018) (describing

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*Under this Court's precedents, "the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion proscribes (or prescribes)." *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872, 879 (1990) (internal quotation marks omitted). As a result of *Smith*, accommodations for those with sincerely held religious beliefs have generally been viewed as the domain of positive state and federal law. See, *e. g.*, *Klein* v. *Oregon Bureau of Labor & Industries*, 289 Ore. App. 507, 543–546, 410 P. 3d 1051, 1074–1076 (2017) (rejecting a Free Exercise claim under *Smith*).

owners of wedding studio who declined to participate in same-sex weddings for religious reasons as treating homosexuals like "`social outcasts'" (quoting *Masterpiece Cakeshop, Ltd.* v. *Colorado Civil Rights Comm'n*, 584 U. S. 617, 631 (2018))).

* * *

This petition implicates important questions about the scope of our decision in *Obergefell*, but it does not cleanly present them. For that reason, I concur in the denial of certiorari. Nevertheless, this petition provides a stark reminder of the consequences of *Obergefell*. By choosing to privilege a novel constitutional right over the religious liberty interests explicitly protected in the First Amendment, and by doing so undemocratically, the Court has created a problem that only it can fx. Until then, *Obergefell* will continue to have "ruinous consequences for religious liberty." 576 U. S., at 734 (THOMAS, J., dissenting).

No. 19–1045. KAUR *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 241 Md. App. 743.

Statement of JUSTICE SOTOMAYOR respecting the denial of certiorari.

Although I join the Court's decision to deny certiorari, I write separately to address a concerning feature of this petition: The prosecutors who tried this case had extensive knowledge of defense counsel's confdentia l communications with the defendant, petitioner Raminder Kaur. For the reasons stated below, I fear that, in this case, the criminal justice system failed to live up to its highest ideals.

In 2014, Kaur was convicted of frst-degree murder by a Maryland jury. Shortly thereafter, she moved for a new trial on the ground that her defense attorney had provided her with ineffective assistance of counsel. The trial court ordered Kaur to turn over her "entire defense f le" so that prosecutors could respond adequately to her motion. 2019 WL 2407997, *5 (Md. Ct. Spec. App., June 7, 2019). After holding a multiday hearing, the court concluded that "the interests of justice required granting Ms. Kaur a new trial." *Id.*, at *6; see Md. Rule 4–331(a) (2020).

Because she had disclosed "a considerable amount of privileged information, including communications between [her] and her lawyers, communications between her lawyers and their support staff, and her lawyers' investigative and strategic work-product,"

Kaur asked the court for a protective order barring the prosecutors who had personally reviewed her defense file from retrying her case. 2019 WL 2407997, *1. The court agreed to prohibit the State from making use of Kaur's privileged information at trial, but it denied her request to be tried by an untainted prosecution team. As a result, the same lawyers who were "exposed to all of Ms. Kaur's privileged information" tried Kaur a second time. *Id.*, at *17. Kaur was again convicted, and she was sentenced to life imprisonment.

Kaur appealed to the Court of Special Appeals of Maryland, arguing (as relevant here) that the State violated her Sixth Amendment right to counsel by permitting attorneys who had reviewed her privileged information to prosecute her case. As an initial matter, the court rejected the State's contention that, by disclosing confidential information in the course of seeking a new trial, Kaur had effectively waived her attorney-client privilege for all purposes. But the court also rejected Kaur's contention that the prosecutors' knowledge of her defense strategy was presumptively prejudicial. Instead, the court concluded that Kaur had to demonstrate a realistic possibility that she was harmed in the second trial by the prosecutors' access to her privileged information or that the prosecutors used such information to their advantage. After comparing the records of Kaur's two trials, the court determined that Kaur had failed to make the requisite showing.

The Court of Appeals of Maryland, the State's highest court, denied further review. Kaur then filed a petition for a writ of certiorari in this Court.

"[I]t has long been recognized that the essence of the Sixth Amendment right is privacy of communication with counsel." *Weatherford* v. *Bursey*, 429 U. S. 545, 563 (1977) (Marshall, J., dissenting) (internal quotation marks and ellipsis omitted). In *Weatherford*, this Court considered whether a defendant's Sixth Amendment right had been violated when, at the defendant's invitation, an undercover agent attended a meeting between the defendant and his lawyer. *Id.*, at 550–551, 558. Based in part on the fact that there had been "no communication of defense strategy to the prosecution," the Court rejected the defendant's claim. *Id.*, at 558. But the Court noted that the defendant "would have [had] a much stronger case" "had the prosecution learned . . . the details of the [lawyer-client] conversations about trial preparations." *Id.*, at 554.

Since *Weatherford*, many federal and state courts have struggled to def ne what burden, if any, a defendant must meet to demonstrate prejudice from a prosecutor's wrongful or negligent acquisition of privileged information. Unlike the defendants in those cases, however, Kaur disclosed (albeit at the trial court's direction) privileged information to the prosecutors for the limited purpose of vindicating her right to effective assistance of counsel. The prosecutors did not obtain Kaur's information surreptitiously. Few courts have had occasion to opine on whether the Sixth Amendment bars prosecutors from retrying a defendant in such circumstances. Cf. *Bittaker* v. *Woodford*, 331 F. 3d 715, 722 (CA9 2003) (holding that a waiver of attorney-client privilege for purposes of raising an ineffective-assistance-of-counsel claim does not extend to retrial, in part because "[e]xtending the waiver . . . would immediately and perversely skew the second trial in the prosecution's favor"). Because this question could beneft from further consideration by the lower courts, I agree with the decision to deny certiorari in this case.

But three important points bear mention. First, it is deeply disconcerting that the State has suggested that defendants who raise ineffective-assistance-of-counsel claims during the trial phase must forfeit their right to privileged communications with counsel. To vindicate the past denial of her Sixth Amendment right to effective assistance of counsel, a defendant should not have to waive her Sixth Amendment right to attorney-client confdentia lity for purposes of any retrial to which she is entitled. See *Simmons* v. *United States*, 390 U. S. 377, 394 (1968) ("[W]e f nd it intolerable that one constitutional right should have to be surrendered in order to assert another").

Second, this case demonstrates the many insidious ways that potential Sixth Amendment violations can affect the course of a trial. Take, for example, Kaur's ability to testify in her own defense. After the trial court denied her motion to be tried by new prosecutors, Kaur f led a motion "to limit the scope of the State's cross-examination in the event that [she] chose to testify." 2019 WL 2407997, *19. Kaur's concern that the State might use her privileged information for its own advantage was hardly hypothetical: One of the prosecutors had, in fact, already informed the court that she had taken the opportunity to "`scour'" Kaur's defense f le and that she had "`made a list of all the negatives that [would] befall the defendant'" should she choose to testify.

Id., at *18 (some alterations omitted). After a "three-way discussion between counsel and the trial court," it was agreed that the prosecutor would "rely solely upon her recollection of Ms. Kaur's prior testimony" from the hearing on her motion for a new trial, but that one of the prosecutor's assistants could review the transcript "for exact wording." *Id.*, at *19. The court then "reserved any ruling on the scope of possible cross-examination until Ms. Kaur completed her direct testimony." *Ibid.* Perhaps unsurprisingly, Kaur declined to testify.

This is just one example of the many ways in which the prosecutors' possession of Kaur's privileged information could have subtly but indelibly affected the course of her trial. One can think of many others. The prosecutors, either intentionally or subconsciously, may have selected a different mix of jurors. They may have changed their pretrial preparation, perhaps by emphasizing different parts of the State's case or focusing on different weaknesses in the defense. Or they may have considered different lines of questioning, brainstormed different objections, or anticipated different arguments. The trouble with all of these scenarios is that, while the Court of Special Appeals no doubt dutifully reviewed the record, it is exceedingly diffcu lt to prove a negative. It would be an impossible task for any court, no matter how diligent, to identify and assess all potential sources of prejudice simply by comparing the records of two trials.

Finally and crucially, the decision whether to allow the original prosecution team to retry Kaur was not the court's alone to make. The prosecutors, too, had a choice. And in making that choice, as with all prosecutorial decisions, those lawyers acted as "the representative[s] not of an ordinary party to a controversy, but of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Berger* v. *United States*, 295 U. S. 78, 88 (1935). Prosecutors wield an immense amount of power, and they do so in the name of the State itself. That unique privilege comes with the exceptional responsibility to ensure that the criminal justice system indeed serves the ends of justice. Prosecutors fall short of this task, and therefore do a grave disservice to the people in whose name they litigate, when they permit themselves to enjoy unfair trial advantages at defendants' expense. Here, regardless of the reason for their acquisition of Kaur's privileged information, and regardless of whatever minimum conduct was required of them

by the Sixth Amendment, the prosecutors should have recused themselves from participating in Kaur's second trial as a matter of professional conscience. Their failure to do so casts a troubling and unnecessary shadow over Kaur's conviction and sentence to life imprisonment.

No. 19–1220. SZONYI *v.* BARR, ATTORNEY GENERAL. C. A. 9th Cir. Motion of Pacifc Legal Foundation for leave to f le brief as *amicus curiae* granted. Certiorari denied. Reported below: 942 F. 3d 874.

No. 19–1252. CAMPBELL ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Motion of Center for Auto Safety for leave to f le brief as *amicus curiae* granted. Certiorari denied. Reported below: 932 F. 3d 1331.

No. 19–1255. BAKER, WARDEN, ET AL. *v.* ROSE. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 789 Fed. Appx. 5.

No. 19–1307. THOMAS, WARDEN *v.* BARNES. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 938 F. 3d 526.

No. 19–1341. VAN AUKEN, AS TRUSTEE AND BENEFICIARY *v.* CATRON ET AL. Ct. App. N. M. Motion of Center for Estate Administration Reform et al. for leave to f le brief as *amici curiae* granted. Certiorari denied.

No. 19–1415. DIERLAM *v.* TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 5th Cir. Certiorari before judgment denied.

No. 19–1440. AMMONS ET AL. *v.* WISCONSIN CENTRAL, LTD. Sup. Ct. Ill. Motion of Sheet Metal, Air, Rail Transportation Workers-Transportation Division, et al. for leave to f le brief as *amici curiae* granted. Certiorari denied. Reported below: 2019 IL 124454.

No. 19–7688. NOBLE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 216 A. 3d 387.

No. 19–8560. NOBLE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 216 A. 3d 369.

No. 19–8614. FIELDS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 949 F. 3d 1240.

No. 19–8621. PETERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 797 Fed. Appx. 117.

No. 19–8656. JACOBY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 797 Fed. Appx. 412.

No. 19–8735. JACKSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO and JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 19–8814. DAVIS *v.* SHARP, INTERIM WARDEN. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 943 F. 3d 1290.

No. 19–8857. JONES *v.* DOUGLAS COUNTY JAIL. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition.

No. 19–8924. JENKINS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 20–57. MCGINNIS, BY HIS CONSERVATOR JONES *v.* PERDUE, SECRETARY OF AGRICULTURE, ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 950 F. 3d 886.

No. 20–98. WOOD, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF WOOD *v.* BOEING CO. C. A. D. C. Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 946 F. 3d 607.

No. 20–106. VILAR ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 20–122. TAYLOR *v.* TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari before judgment denied.

No. 20–142. SKIDMORE, AS TRUSTEE FOR THE RANDY CRAIG WOLFE TRUST *v.* ZEPPELIN ET AL. C. A. 9th Cir. Motions of Pullman Group, LLC, et al. and California Society of Entertainment Lawyers for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 952 F. 3d 1051.

No. 20–220. VBS DISTRIBUTION, INC., ET AL. *v.* NUTRIVITA LABORATORIES, INC., ET AL. C. A. 9th Cir. Motions of Law Offce of J. Edward Niehaus and Erwin Chemerinsky for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 811 Fed. Appx. 1005.

No. 20–265. RAMIREZ ET AL. *v.* CONOCOPHILLIPS CO. ET AL. Sup. Ct. Tex. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 599 S. W. 3d 296.

No. 20–5028. LUSSY *v.* DAHOOD. Sup. Ct. Mont. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 400 Mont. 558, 462 P. 3d 244.

No. 20–5029. LUSSY *v.* LUSSY. Sup. Ct. Mont. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 400 Mont. 558, 462 P. 3d 243.

No. 20–5094. LAUX *v.* MENTOR WORLDWIDE, LLC. C. A. 9th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 786 Fed. Appx. 84.

No. 20–5100. TURNER *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari before judgment denied.

No. 20–5166. J. J. H. *v.* WAUKESHA COUNTY, WISCONSIN. Ct. App. Wis. Motion of National Association of the Deaf and Disability Rights Wisconsin for leave to file brief as *amicus curiae* granted. Certiorari denied.

No. 20–5235. BIKUNDI *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the con-

sideration or decision of this petition. Reported below: 926 F. 3d 761.

No. 20–5243. HENNESS *v.* DEWINE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 946 F. 3d 287.

Statement of JUSTICE SOTOMAYOR respecting the denial of certiorari.

The State of Ohio plans to execute petitioner using a three-drug protocol of midazolam, a paralytic agent, and potassium chloride. Petitioner challenges this method of execution as unconstitutional, partly on the ground that midazolam is very likely to induce sensations of suffocation and drowning, terror, and panic (akin to that produced by waterboarding). After holding a 4-day evidentiary hearing in which it considered the testimony of 18 witnesses, the District Court agreed, noting that the scientifc case against midazolam had grown "much stronger" over the past few years. App. to Pet. for Cert. 159a. The District Court ultimately rejected petitioner's challenge, however, concluding that petitioner had failed to identify a feasible and readily implemented alternative method of execution, a showing that this Court has required since its decision in *Glossip* v. *Gross*, 576 U. S. 863 (2015).

The Sixth Circuit affr med the District Court's separate holding that petitioner had failed to identify an appropriate alternative method of execution. But, parting ways with the District Court, the Sixth Circuit concluded that, even if petitioner is made to feel as if he is drowning as he dies, Ohio's midazolam-based protocol would not cause petitioner unconstitutionally severe pain. I write to address the Sixth Circuit's novel and unsupported conclusion that pain is constitutionally tolerable so long as it is no worse than the suffering caused by a botched hanging.[1]

[1] Elsewhere I have written about the mounting evidence that midazolam-based protocols may cause a prisoner to feel as though he is suffocating to death, an excruciating process that could last as long as 18 minutes, and about the troubling failure of courts of appeals to defer to district courts' well-supported f ndings as to the risk of such pain. See *Irick* v. *Tennessee*, 585 U. S. 1048, 1048–1049 (2018) (SOTOMAYOR, J., dissenting from denial of application for stay); *Otte* v. *Morgan*, 582 U. S. 955, 955–956 (2017) (SOTOMAYOR, J., dissenting from denial of application for stay and denial of certiorari); *Arthur* v. *Dunn*, 580 U. S. 1141, 1153–1154 (2017) (SOTOMAYOR, J., dissenting from denial of certiorari). I have also separately written about this Court's "perverse requirement that inmates offer alternative methods for their own executions" and addressed the serious barriers inmates face in so doing.

The Sixth Circuit began its reasoning from the premise that pain, to be constitutionally cognizable, must reach a certain level of severity. Severe enough for constitutional recognition, in the court's view, would be the pain caused by "breaking on the wheel, fay ing alive, [and] rending asunder with horses." *In re Ohio Execution Protocol Litig.*, 946 F. 3d 287, 290 (2019) (quoting *Bucklew* v. *Precythe*, 587 U. S. 119, 131 (2019); alteration omitted). Not severe enough, in contrast, would be the pain caused by a botched hanging in which the prisoner "`slowly'" died of "suffocation" over the course of "several minutes," instead of dying instantly as a result of the sudden drop. 946 F. 3d, at 290 (quoting *Bucklew*, 587 U. S., at 132). Even assuming, then, that Ohio's three-drug protocol will cause petitioner to feel a sensation of "drowning and suffocation" as he dies, the court concluded that such pain is constitutionally acceptable because it looks "a lot like the risks of pain associated with hanging." 946 F. 3d, at 290. The Sixth Circuit thus appears to have created a categorical rule that a method of execution passes constitutional muster so long as it poses no greater risk of pain than the slow suffocation of a hanging gone wrong.[2] See *Campbell* v. *Wood*, 511 U. S. 1119, 1122 (1994) (Blackmun, J., dissenting from denial of certiorari) (describing the experience of "[a] person who slowly asphyxiates or strangulates while twisting at the end of a rope" during a botched hanging).

McGehee v. *Hutchinson*, 581 U. S. 933, 935 (2017) (opinion dissenting from denial of application for stay and denial of certiorari); see *Zagorski* v. *Parker*, 586 U. S. 938, 941–942 (2018) (same); *Glossip* v. *Gross*, 576 U. S. 863, 969–978 (2015) (SOTOMAYOR, J., dissenting). The Sixth Circuit's opinion refec ted many of these problems. And as I write here, the court erred in enshrining hanging as a categorical measure of constitutionally tolerable suffering. Because the Sixth Circuit's separate analysis that petitioner had failed to identify a "feasible and readily implemented alternative method of execution" is not clearly wrong under this Court's recent precedent, *Bucklew* v. *Precythe*, 587 U. S. 119, 134 (2019), however, I concur in the denial of certiorari.

[2] Even on the Sixth Circuit's own terms, it is not at all clear that midazolam's risk of pain is no worse than that of a botched hanging. The Sixth Circuit and this Court have described such a hanging as involving "several minutes" of suffocation. 946 F. 3d, at 290 (quoting *Bucklew*, 587 U. S., at 132). By contrast, midazolam poses a risk that a condemned inmate will "experience sensations of drowning, suffocating, and being burned alive from the inside out," for at least 10 and as many as 18 minutes. *Irick*, 585 U. S., at 1048 (SOTOMAYOR, J., dissenting from denial of application for stay).

The Sixth Circuit erred in enshrining hanging as a permanent measure of constitutionally tolerable suffering. Its decision conflicts with this Court's recent precedent, which makes clear that the proper inquiry is comparative, not categorical. See *Bucklew*, 587 U. S., at 134; *Glossip*, 576 U. S., at 878. Since *Glossip*, this Court has held that a risk of pain raises constitutional problems if it is "`substantial when compared to a known and available alternative'" that is "feasible and readily implemented." *Bucklew*, 587 U. S., at 134. If such an alternative exists, and a State nonetheless refuses to adopt it without a legitimate penological reason, then the State's chosen method "cruelly" (and unconstitutionally) "superadds pain to [a] death sentence." *Ibid.*

Although the Sixth Circuit cited *Bucklew* in support of its novel standard, nowhere did this Court suggest that the pain caused by a faulty hanging creates a constitutional foor for "cruel and unusual" punishment under the Eighth Amendment. Applying its comparative standard, *Bucklew* merely noted that a traditional method of execution like hanging is not "*necessarily* rendered unconstitutional as soon as an arguably more humane method . . . becomes available." *Ibid.* (emphasis added). But that is only because a State could have a legitimate reason for not immediately adopting the more humane method. *Bucklew* does not provide a categorical safe harbor for methods of execution that, in a court's estimation, will cause no greater suffering than that caused by certain traditional methods. See *ibid.* If there were a feasible and readily implemented method of execution that would prevent petitioner from experiencing a sensation akin to drowning as he dies, it would be cruel and unusual for Ohio to refuse to adopt it.

No. 20–5431. ACKERMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 804 Fed. Appx. 900.

No. 20–5469. LEE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 19–7319. WATERS *v.* STEWART ET AL., 589 U. S. 1281;
No. 19–7592. MCALLISTER *v.* MALFITANO ET AL., 590 U. S. 907;

No. 19–8061. WEIXING WANG *v.* MARCOTTE, 591 U. S. 1018;
No. 19–8119. WILLIAMS *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, 590 U. S. 972;
No. 19–8251. TALKINGTON *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 590 U. S. 995, *sub nom. Talkington* v. *Davis*;
No. 19–8380. MONDS *v.* UNITED STATES, 590 U. S. 974; and
No. 19–8493. STINSON *v.* HENDRIX, WARDEN, 591 U. S. 1007. Petitions for rehearing denied.

No. 19–8305. ONONUJU *v.* VIRGINIA, 591 U. S. 1006. Motion for leave to file petition for rehearing denied.

OCTOBER 8, 2020

Dismissals Under Rule 46

No. 20–74. UNITED STATES *v.* IMAGE PROCESSING TECHNOLOGIES LLC, ET AL. [among other cases under this Court's Rule 12.4]. C. A. Fed. Cir. Certiorari dismissed only with respect to the judgment of the Court of Appeals in *Image Processing Technologies LLC* v. *Samsung Electronics Co.*, Nos. 2018–2156, 2019–1408, and 2019–1485 under this Court's Rule 46.2.

No. 20–5356. RUDOLPH *v.* UNITED STATES. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 806 Fed. Appx. 172.

Miscellaneous Order

No. 20A34. FOOD AND DRUG ADMINISTRATION ET AL. *v.* AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS ET AL. D. C. Md. The Government seeks a stay of an injunction preventing the Food and Drug Administration from enforcing in-person dispensation requirements for the drug mifepristone during the pendency of the public health emergency. The Government argues that, at a minimum, the injunction is overly broad in scope, given that it applies nationwide and for an indefinite duration regardless of the improving conditions in any individual State. Without indicating this Court's views on the merits of the District Court's order or injunction, a more comprehensive record would aid this Court's review. The Court will therefore hold the Government's application in abeyance to permit the District Court to promptly consider a motion by the Government to dissolve,

modify, or stay the injunction, including on the ground that relevant circumstances have changed. See *Febre* v. *United States*, 396 U. S. 1225, 1225–1226 (1969) (Harlan, J., in chambers); see also *Parr* v. *United States*, 351 U. S. 513, 520 (1956). The District Court should rule within 40 days of receiving the Government's submission.

JUSTICE ALITO, with whom JUSTICE THOMAS joins, dissenting.

The Government has f led an emergency application to stay an injunction against enforcement of a longstanding drug-safety rule issued by the Food and Drug Administration (FDA). Six weeks have passed since the application was submitted, but the Court refuses to rule. Instead, it defers any action until the Government moves in the District Court to modify the injunction and the District Court rules on that motion, a process that may take another six weeks or more.

There is no legally sound reason for this unusual disposition. The only justifcati on even hinted by the Court is the possibility that modifcati on of the injunction may be required due to changes in the severity of the problems caused by the COVID–19 pandemic, but that possibility does not justify the Court's refusal to rule. Indeed, for all practical purposes, there is little difference between what the Court has done and an express denial of the Government's application. In both situations, the FDA rule may not be enforced, and in both situations, the Government is able to move the District Court to modify the injunction based on changed circumstances. See *Horne* v. *Flores*, 557 U. S. 433, 447 (2009) (Federal Rule of Civil Procedure 60(b)(5) "provides a means by which a party can ask a court to modify or vacate a judgment or order if `a signifcant change . . . in factual conditions' . . . renders continued enforcement `detrimental to the public interest' " (quoting *Rufo* v. *Inmates of Suffolk County Jail*, 502 U. S. 367, 384 (1992))).

There is, however, one difference (but not a legally signifcant one) between what the Court has done and the express denial of the Government's application. Expressly denying a stay would highlight the inconsistency in the Court's rulings on COVID–19-related public safety measures. In response to the pandemic, state and local offcia ls have imposed unprecedented restrictions on personal liberty, including severe limitations on First Amendment rights. Offcia ls have drastically limited speech, banning or

restricting public speeches, lectures, meetings, and rallies. The free exercise of religion also has suffered previously unimaginable restraints, and this Court has stood by while that has occurred.

In *South Bay United Pentecostal Church* v. *Newsom*, 590 U. S. 965 (2020), this hands-off approach was defended on the following ground:

> "Our Constitution principally entrusts `the safety and the health of the people' to the politically accountable offcia ls of the States `to guard and protect.' *Jacobson* v. *Massachusetts*, 197 U. S. 11, 38 (1905). When those offcia ls `undertake to act in areas fraught with medical and scientifc uncertainties,' their latitude `must be especially broad.' *Marshall* v. *United States*, 414 U. S. 417, 427 (1974). Where those broad limits are not exceeded, they should not be subject to second-guessing by an `unelected federal judiciary,' which lacks the background, competence, and expertise to assess public health and is not accountable to the people. See *Garcia* v. *San Antonio Metropolitan Transit Authority*, 469 U. S. 528, 545 (1985)." *Id.*, at 967 (ROBERTS, C. J., concurring in denial of application for injunctive relief) (alterations omitted).

The extent of this deference was illustrated weeks later when the Court deferred to the judgment of the Governor of Nevada that attendance at worship services presented a greater threat to public health than engaging in the diversions offered by the State's casinos. *Calvary Chapel Dayton Valley* v. *Sisolak*, 591 U. S. 1042 (2020). The possibility that this dubious conclusion might have been based less on science than on the infuence of the State's powerful gaming industry and its employees was not enough to move the Court. Near-total deference was the rule of the day.

In the present case, however, the District Court took a strikingly different approach. While COVID–19 has provided the ground *for restrictions on First Amendment rights*, the District Court saw the pandemic as a ground *for expanding the abortion right* recognized in *Roe* v. *Wade*, 410 U. S. 113 (1973). At issue is a requirement adopted by the FDA for the purpose of protecting the health of women who wish to obtain an abortion by ingesting certain medications, specifca lly, mifepristone and misoprostol. Under that requirement, a woman must receive a mifepristone tablet in person at a hospital, clinic, or medical offce . Electronic Court Filing in No. 8:20–cv–01320, Doc. 1–4 (D Md., May 27,

2020), p. 3. The FDA frst adopted the requirement in 2000, and then included it in a package of safety requirements under express statutory authority in 2007. See 21 U. S. C. § 355–1(f)(3)(C). Over the course of four presidential administrations, the FDA has enforced this requirement and has not found it appropriate to remove it. During the COVID–19 pandemic, the FDA suspended in-person dispensing requirements for some drugs, but it evidently decided that the mifepristone requirement should remain in force.

Nevertheless, a District Court Judge in Maryland took it upon himself to overrule the FDA on a question of drug safety. Disregarding THE CHIEF JUSTICE's admonition against judicial second-guessing of offcia ls with public health responsibilities, the judge concluded that requiring women seeking a medication abortion to pick up mifepristone in person during the COVID–19 pandemic constitutes an "undue burden" on the abortion right, and he therefore issued a nationwide injunction against enforcement of the FDA's requirement. The judge apparently was not troubled by the fact that those responsible for public health in Maryland thought it safe for women (and men) to leave the house and engage in numerous activities that present at least as much risk as visiting a clinic—such as indoor restaurant dining, visiting hair salons and barber shops, all sorts of retail establishments, gyms and other indoor exercise facilities, nail salons, youth sports events, and, of course, the State's casinos.* And the judge made the injunction applicable throughout the country, including in locales with very low infection rates and limited COVID–19 restrictions.

Under the approach recently taken by the Court in cases involving restrictions on First Amendment rights, the proper disposition of the Government's stay application should be clear: grant. But the Court is not willing to do that. Nor is it willing to deny the application. I see no reason for refusing to rule.

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*See, *e. g.*, Governor Hogan Announces Next Stage Two Reopenings, Including Indoor Dining and Outdoor Amusements (June 10, 2020), https://governor.maryland.gov/2020/06/10/governor-hogan-announces-next-stage-two-reopenings-including-indoor-dining-and-outdoor-amusements/; Governor Hogan Announces Beginning of Stage Two of Maryland's COVID–19 Recovery, Safe and Gradual Reopening of Workplaces and Businesses (June 3, 2020), https://governor.maryland.gov/2020/06/03/governor-hogan-announces-beginning-of-stage-two-of-marylands-covid-19-recovery-safe-and-gradual-reopening-of-workplaces-and-businesses/.

This case presents important issues that richly merit review. The District Court's decision, if reviewed, is likely to be reversed. And if the FDA is right in its assessment of mifepristone, nonenforcement of the requirement risks irreparable harm. A stay is amply warranted.

For these reasons, I respectfully dissent.

October 13, 2020

Certiorari Dismissed

No. 20–5249. Blacher *v.* California. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 20–5401. Sundy *v.* Friendship Pavilion Acquisition Co., LLC, et al. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 807 Fed. Appx. 977.

No. 20–5581. Drevaleva *v.* United States. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

Miscellaneous Orders

No. 20A35. Arana-Molina et al. *v.* Barr, Attorney General. Application for stay, addressed to The Chief Justice and referred to the Court, denied.

No. 20A62. Ross, Secretary of Commerce, et al. *v.* National Urban League et al. D. C. N. D. Cal. Application for stay, presented to Justice Kagan, and by her referred to the Court, granted. The District Court's September 24, 2020, order granting preliminary injunction is stayed pending disposition of the appeal in the United States Court of Appeals for the Ninth Circuit and disposition of the petition for writ of certiorari, if such writ is timely sought. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the

event the petition for writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

JUSTICE SOTOMAYOR, dissenting.

Today, the Court stays a preliminary injunction requiring the Census Bureau to follow the data collection plan the agency once described as necessary to avoid "risking signifcant impacts on data quality." Electronic Case Filing in No. 5:20–cv–5799, Doc. 198–7 (ND Cal., Sept. 22, 2020), p. 131 (ECF). The injunction required the Bureau to continue its data collection efforts until October 31, 2020, a deadline the Bureau itself selected in response to the signifcant operational disruptions caused by the COVID–19 pandemic. The Government now claims that this Court's immediate intervention is necessary because, absent a stay, the Bureau will not be able to meet the December 31 statutory deadline for reporting census results to the President. This representation is contrary to the Government's repeated assertions to the courts below that it could not meet the statutory deadline under any circumstances. Moreover, meeting the deadline at the expense of the accuracy of the census is not a cost worth paying, especially when the Government has failed to show why it could not bear the lesser cost of expending more resources to meet the deadline or continuing its prior efforts to seek an extension from Congress. This Court normally does not grant extraordinary relief on such a painfully disproportionate balance of harms.

I

In April 2020, the Bureau extended the deadline for self-responses to the census questionnaire and for its NonResponse Follow-Up feld operation from July 31, 2020, to October 31, 2020. In the words of the Bureau's associate director for feld operations, it was "ludicrous" to expect the Bureau to "complete 100% of the nation's data collection earlier than [October 31]" in the middle of a pandemic. 489 F. Supp. 3d 939, 956 (ND Cal. 2020).

The Bureau also rescheduled its anticipated report to the President. Under the Census Act, the Secretary of Commerce must deliver to the President a report conveying the results of the census by December 31, 2020. 13 U. S. C. § 141(b). The Bureau, however, moved this deadline to April 30, 2021. President Trump did not initially object, publicly stating that "`I don't know

that you even have to ask [Congress]. This is called an act of God. This is called a situation that has to be.' " 489 F. Supp. 3d, at 990, 2020 WL 5739144, *37. The Bureau nonetheless requested that Congress formally extend the December 31 statutory deadline by 120 days. The House of Representatives passed a bill extending the deadline, and on July 23, 2020, a Senate Committee held a hearing on the bill.

On August 3, 2020, however, two weeks after President Trump announced his intent to exclude undocumented immigrants from the population base for congressional apportionment, Secretary Ross announced the "Replan Schedule." Under the Replan Schedule, data collection would end on September 30, 2020. The administration simultaneously stopped pushing Congress to extend the reporting deadline by 120 days.

II

Respondents, who are advocacy groups, cities, counties, and Native tribes, sued to enjoin the Replan Schedule. The District Court issued detailed factual f ndings, concluding that respondents had demonstrated a likelihood of success on the merits of their claim that the Bureau's reversal was arbitrary and capricious,[1] and that the harms to respondents absent an injunction vastly outweighed any harm the injunction would cause the Government. The court preliminarily enjoined the Replan Schedule's September 30 deadline for completing data collection (*i. e.*, the deadline for individuals to complete the census questionnaire and for the Bureau to wrap up its feld operations) and the December 31 deadline for reporting the results to the President. The District Court subsequently clarifed that the Bureau's original October 31 deadline for data collection would be reinstated. The Court of Appeals for the Ninth Circuit reversed the injunction as to the December 31 deadline, but affr med the reinstatement of

[1] Specifca lly, the District Court concluded that respondents were likely to succeed because the Government failed to consider important aspects of the problem; the Replan Schedule ran counter to the evidence before the agency; the Government failed to consider an alternative to and articulate a satisfactory explanation for its decision to adopt the Replan; and the Government failed to consider reliance interests of municipalities and organizations who publicized the October 31 deadline to their communities. 489 F. Supp. 3d 939, 981–1001 (ND Cal. 2020).

the October 31 deadline. The Government now asks this Court to intervene and stay the entire injunction.

I would deny a stay of that injunction. An applicant for a stay "must demonstrate (1) `a reasonable probability' that this Court will grant certiorari, (2) `a fair prospect' that the Court will then reverse the decision below, and (3) `a likelihood that irreparable harm [will] result from the denial of a stay.'" *Maryland* v. *King*, 567 U. S. 1301, 1302 (2012) (ROBERTS, C. J., in chambers) (quoting *Conkright* v. *Frommert*, 556 U. S. 1401, 1402 (2009) (Ginsburg, J., in chambers)). The Government fails to demonstrate that the injunction is likely to cause it irreparable harm. Regardless of the merits of respondents' claims, this failure, alone, requires denying the requested stay.

The Government articulates a single harm: that if data collection continues through October 31, the Bureau will not meet the December 31 statutory deadline to report census results to the President. But it is unlikely the District Court's injunction will be the cause of the Bureau's inability to do so. Indeed, for months, senior Bureau offcia ls have represented that, whatever the data collection deadline, meeting the December 31 reporting deadline would be impossible. See 977 F. 3d 770, 779 (CA9 2020) ("[T]he President, Department of Commerce officials, Bureau offcia ls, and outside analysis from the Offce of the Inspector General, the Census Scientifc Advisory Committee, and the Government Accountability Offce all stated unequivocally, some before and some after the adoption of the Replan, that the Bureau would be unable to meet [the December 31] deadline under any conditions"). Only recently have offcia ls begun to claim that the Bureau might yet be able to meet the statutory deadline, and even then, their story keeps changing. See *ibid.* (noting that the Government's representation that it could meet the statutory deadline if it ended collection by October 5 was at odds with the September 22 declaration of a senior Bureau offcia l). It is in fact far from clear why the Government now believes that the December 31 deadline was feasible under the Replan Schedule but is impossible under the injunction. Notably, the Government fails to explain why it cannot meet the statutory deadline by adding resources to accelerate data processing as it did with data collection. App. to Application for Stay 117a (Census Bureau press release explaining that the Replan

Schedule required "hiring of more employees to accelerate the completion of data collection and apportionment counts").

That the Bureau has provided "ever-changing projections" about the impact of the data collection deadline on its statutory deadline is understandable given the complexity of the census and the unanticipated impact of the COVID–19 pandemic. 977 F. 3d, at 780; see also 489 F. Supp. 3d, at 953–955. But those ever-changing projections demonstrate that any harm attributable to the injunction is at best uncertain, and, more likely, nonexistent. This is especially true given that, until recently, the Bureau sought an extension of the December 31 statutory deadline, and Congress had made signifcant progress toward granting it. The Bureau's abrupt shift in focus from achieving an accurate count to meeting its deadline at all costs belies its newfound concern for issuing its report by December 31. See *New York* v. *Trump*, 490 F. Supp. 3d 736, 742 (SDNY 2020) ("As [the Government] admit[s], there is no magic to the deadline for the Secretary's Section 141(b) report" to the President).

In contrast to the Government's unsupported claims of irreparable harm, respondents will suffer substantial injury if the Bureau is permitted to sacrifce accuracy for expediency. As the District Court found, and the Ninth Circuit credited, "[a]n inaccurate count would affect the distribution of federal and state funding, the deployment of services, and the allocation of local resources." 489 F. Supp. 3d, at 1001; 977 F. 3d, at 780. The Government attempts to downplay that risk by asserting that over 99 percent of households in 49 States are already accounted for.[2] Reply Brief 6. But even a fraction of a percent of the Nation's 140 million households amounts to hundreds of thousands of people left uncounted. See

[2] Although this claim bears signifcant weight for the Government's argument, the emergency posture of this case prevents this Court from properly evaluating the claim's accuracy. For example, as the District Court found, Government oversight bodies have repeatedly warned that accelerating the census schedule "increases the risks to obtaining a complete and accurate 2020 Census." 489 F. Supp. 3d, at 957–959. Yet the Government addresses data quality concerns primarily in a footnote. Application for Stay 7–8, n. 3; Reply Brief 6–7. Without more, the Government's bald assertion that its collection efforts are 99 percent complete cannot support its request for extraordinary relief.

ECF Doc. 81–1, ¶36 (ND Cal., Sept. 4, 2020). And signifcantly, the percentage of nonresponses is likely much higher among marginalized populations and in hard-to-count areas, such as rural and tribal lands. *Id.*, ¶12 (discussing the Bureau's plan to develop "culturally relevant advertisements targeting hard-to-count communities"); Response to Application 30. When governments allocate resources using census data, those populations will disproportionately bear the burden of any inaccuracies. See *Department of Commerce* v. *New York*, 588 U. S. 752, 767 (2019) (States "show[ed] that if noncitizen households are undercounted by as little as 2% . . . they will lose out on federal funds that are distributed on the basis of state population"). It is thus unsurprising that, for the 2010 census, the Bureau continued its feld operations for a full month after reaching the 99 percent threshold that the Government now deems good enough. See Response to Application 29–30 (citing Dept. of Commerce, Bureau of Census, A. Jackson, 2010 Census Nonresponse Followup Operations Assessment Report 47 (2012)). The harms caused by rushing this year's census count are irreparable. And respondents will suffer their lasting impact for at least the next 10 years.

* * *

The Government has not satisfed its "especially heavy burden" to justify a stay pending appeal of the lower court's injunction. *Packwood* v. *Senate Select Comm. on Ethics*, 510 U. S. 1319, 1320 (1994) (Rehnquist, C. J., in chambers). Because the harms associated with an inaccurate census are avoidable and intolerable, I respectfully dissent from the grant of stay.

No. 20M25. HollyFrontier Cheyenne Refining, LLC, et al. *v.* Renewable Fuels Assn. et al.; and

No. 20M27. Ammar I. *v.* Connecticut. Motions for leave to f le petitions for writs of certiorari with supplemental appendixes under seal granted.

No. 20M26. Lattisaw *v.* District of Columbia. Motion to direct the Clerk to f le petition for writ of certiorari out of time denied.

No. 20–5296. A. I. *v.* M. A. Super. Ct. N. J., App. Div.; and

No. 20–5381. Curtin *v.* Cortez. C. A. 11th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied.

Petitioners are allowed until November 3, 2020, within which to pay the docketing fees required by this Court's Rule 38(a).

No. 20–5674. IN RE WARD;
No. 20–5691. IN RE BERRY;
No. 20–5731. IN RE ALFORD; and
No. 20–5761. IN RE BOGAN. Petitions for writs of habeas corpus denied.

No. 20–5374. IN RE ELANSARI; and
No. 20–5726. IN RE JOHNSON. Petitions for writs of mandamus denied.

No. 20–5236. IN RE ROPE; and
No. 20–5575. IN RE WILLIAMS. Petitions for writs of mandamus and/or prohibition denied.

No. 20–5260. IN RE FINDLAY;
No. 20–5534. IN RE BLANCAS; and
No. 20–5673. IN RE WATKINS. Petitions for writs of prohibition denied.

Certiorari Granted

No. 19–1434. UNITED STATES *v.* ARTHREX, INC., ET AL.;
No. 19–1452. SMITH & NEPHEW, INC., ET AL. *v.* ARTHREX, INC., ET AL.; and
No. 19–1458. ARTHREX, INC. *v.* SMITH & NEPHEW, INC., ET AL. C. A. Fed. Cir. Certiorari in No. 19–1434 granted as to Federal Circuit case No. 2018–2140, and certiorari in Nos. 19–1452 and 19–1458 granted, all limited to Questions 1 and 2 as set forth in the July 22, 2020, Memorandum for the United States. Cases consolidated, and a total of one hour is allotted for oral argument. Reported below: 941 F. 3d 1320.

Certiorari Denied

No. 19–1085. DEASEY ET AL. *v.* SLATER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 789 Fed. Appx. 17.

No. 19–1137. TENNESSEE, BY AND THROUGH THE TENNESSEE GENERAL ASSEMBLY, ET AL. *v.* DEPARTMENT OF STATE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 931 F. 3d 499.

No. 19–1186. BAKER, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES *v.* PLANNED PARENT-

HOOD SOUTH ATLANTIC ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 941 F. 3d 687.

No. 19–1352. WESTERN OILFIELDS SUPPLY CO., DBA RAIN FOR RENT *v.* SCALIA, SECRETARY OF LABOR, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 946 F. 3d 584.

No. 19–1378. PHAZZER ELECTRONICS, INC. *v.* TASER INTERNATIONAL, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 773 Fed. Appx. 1092.

No. 19–1433. STAVELY *v.* NORMAN ET AL. Sup. Ct. Utah. Certiorari denied.

No. 19–1456. KK–PB FINANCIAL, LLC *v.* 160 ROYAL PALM, LLC. C. A. 11th Cir. Certiorari denied. Reported below: 785 Fed. Appx. 829.

No. 19–8588. DONELSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 496.

No. 19–8831. REID *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2019 Ark. 363, 588 S. W. 3d 725.

No. 19–8903. GIBSON *v.* INDIANA; and

No. 19–8904. GIBSON *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 133 N. E. 3d 673.

No. 20–5. BLUMENTHAL ET AL. *v.* TRUMP, PRESIDENT OF THE UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 949 F. 3d 14.

No. 20–10. KOLLARITSCH ET AL. *v.* MICHIGAN STATE UNIVERSITY BOARD OF TRUSTEES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 944 F. 3d 613.

No. 20–102. HADSELL *v.* BASKIN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 790 Fed. Appx. 97.

No. 20–114. BUFKIN *v.* SCOTTRADE, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 838.

No. 20–124. FUSCO *v.* MAYS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–125. IRON STONE REAL ESTATE FUND I, L. P., ET AL. *v.* RATNER ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 212 A. 3d 70.

No. 20–131. ESSITY HYGIENE AND HEALTH AB *v.* CASCADES CANADA ULC ET AL. (Reported below: 811 Fed. Appx. 638); and ESSITY PROFESSIONAL HYGIENE NORTH AMERICA LLC *v.* CASCADES CANADA ULC (811 Fed. Appx. 643). C. A. Fed. Cir. Certiorari denied.

No. 20–135. CUSTOMEDIA TECHNOLOGIES, LLC *v.* DISH NETWORK CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 783 Fed. Appx. 1041.

No. 20–141. BLOOMGARDEN *v.* NATIONAL ARCHIVES AND RECORDS ADMINISTRATION. C. A. D. C. Cir. Certiorari denied. Reported below: 798 Fed. Appx. 674.

No. 20–144. SPENCER SAVINGS BANK, SLA, ET AL. *v.* SEIDMAN. Super. Ct. N. J., App. Div. Certiorari denied.

No. 20–148. WASHINGTON ET AL. *v.* BARR, ATTORNEY GENERAL, ET AL. C. A. 2d Cir. Certiorari denied.

No. 20–159. DEVOS *v.* RHINO CONTRACTING, INC., ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 940 N. W. 2d 821.

No. 20–165. CARROLL *v.* MILLER. Sup. Ct. Wis. Certiorari denied. Reported below: 2020 WI 56, 392 Wis. 2d 49, 944 N. W. 2d 542.

No. 20–168. NUSBAUM *v.* NUSBAUM ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 243 Md. App. 653, 221 A. 3d 1107.

No. 20–172. UKPAI *v.* CONTINENTAL AUTOMOTIVE SYSTEMS US, INC. C. A. 6th Cir. Certiorari denied.

No. 20–175. JINIL STEEL CO., LTD. *v.* VALUEPART, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 143.

No. 20–178. PRAFADA *v.* MESA UNIFIED SCHOOL DISTRICT. C. A. 9th Cir. Certiorari denied. Reported below: 792 Fed. Appx. 531.

No. 20–185. JONES *v.* BARBERA, CHIEF JUDGE, COURT OF APPEALS OF MARYLAND. Ct. Sp. App. Md. Certiorari denied.

No. 20–196. Soriano Nunez *v.* Barr, Attorney General. C. A. 3d Cir. Certiorari denied. Reported below: 804 Fed. Appx. 184.

No. 20–211. Rosen *v.* United States et al. C. A. 9th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 92.

No. 20–223. O'Donnell *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 20–228. ESIP Series 2, LLC *v.* Puzhen Life USA, LLC. C. A. Fed. Cir. Certiorari denied. Reported below: 958 F. 3d 1378.

No. 20–232. Anderson *v.* Kennedy. C. A. 7th Cir. Certiorari denied.

No. 20–252. Gannett Co., Inc., et al. *v.* Larson. Sup. Ct. Minn. Certiorari denied. Reported below: 940 N. W. 2d 120.

No. 20–280. Georgiou *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 800 Fed. Appx. 136.

No. 20–302. Dotson *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 949 F. 3d 317.

No. 20–313. Acer America Corp. et al. *v.* Intellisoft, Ltd., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 955 F. 3d 927.

No. 20–327. BBB Industries, LLC *v.* Cardone Industries, Inc. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 20–335. Maryland Reclamation Associates, Inc. *v.* Harford County, Maryland. Ct. App. Md. Certiorari denied. Reported below: 468 Md. 339, 227 A. 3d 230.

No. 20–338. Benjamin *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 958 F. 3d 1124.

No. 20–345. Pueschel *v.* Chao, Secretary of Transportation, et al. C. A. D. C. Cir. Certiorari denied. Reported below: 955 F. 3d 163.

No. 20–346. Pennington *v.* Butler. C. A. 4th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 694.

No. 20–5060. GRAVES *v.* SHINN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 20–5089. KIRKPATRICK *v.* CHAPPELL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 950 F. 3d 1118.

No. 20–5119. POWELL *v.* OHIO. Ct. App. Ohio, 6th App. Dist., Lucas County. Certiorari denied. Reported below: 2019-Ohio-4286, 148 N. E. 3d 51.

No. 20–5228. UNITED STATES EX REL. LU *v.* SAMRA ET AL.; and UNITED STATES EX REL. LU *v.* TRUSTEES OF TUFTS COLLEGE ET AL. C. A. 1st Cir. Certiorari denied.

No. 20–5237. MANHARD *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 282 So. 3d 941.

No. 20–5254. BROWN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 20–5256. MARRON, AKA MU'MIN *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 796.

No. 20–5261. HOUSTON *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 20–5266. ROGERS ET AL. *v.* CADDO PARISH SCHOOL BOARD. Ct. App. La., 2d Cir. Certiorari denied.

No. 20–5269. VALLS *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied.

No. 20–5270. WILSON *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 294 So. 3d 285.

No. 20–5271. WILLINGHAM *v.* BAUMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5277. THOMPSON *v.* HOUMA TERREBONNE HOUSING AUTHORITY ET AL. C. A. 5th Cir. Certiorari denied.

No. 20–5282. ZORIKOVA *v.* REALVEST, INC. Ct. App. Mo., Southern Dist. Certiorari denied.

No. 20–5288. SCHULER *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 184.

No. 20–5289. SANDERSON *v.* FOLEY, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 159 Ohio St. 3d 1432, 2020-Ohio-3634, 148 N. E. 3d 573.

No. 20–5295. ATKINS *v.* SAUL, COMMISSIONER OF SOCIAL SECURITY. C. A. 7th Cir. Certiorari denied. Reported below: 814 Fed. Appx. 150.

No. 20–5297. BRIDGES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2019 IL App (1st) 152604–U.

No. 20–5298. SMITH *v.* BARKER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 332.

No. 20–5305. SMITH *v.* NEW YORK STATE CHILD SUPPORT PROCESSING CENTER ET AL. C. A. 2d Cir. Certiorari denied.

No. 20–5307. GALLOGLY *v.* BARR, ATTORNEY GENERAL, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 787 Fed. Appx. 250.

No. 20–5310. FRANKLIN *v.* BLAIR. C. A. 5th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 261.

No. 20–5313. TUCKER *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 181 App. Div. 3d 103, 117 N. Y. S. 3d 401.

No. 20–5314. STUBBLEFIELD *v.* BROWN, CLERK, CIRCUIT COURT OF ILLINOIS, COOK COUNTY, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 401.

No. 20–5316. SMITH *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–5318. ROZENMAN *v.* SHINN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–5322. TORRENCE *v.* ALASKA. Ct. App. Alaska. Certiorari denied.

No. 20–5328. GIBLIN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 11 Wash. App. 2d 1015.

No. 20–5330. AUCOIN *v.* CUPIL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 958 F. 3d 379.

No. 20–5331. BRUZZONE *v.* INTEL CORP. ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–5333. BLANCO *v.* DIAZ, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–5350. VENABLE *v.* CITY OF PHOENIX, ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–5352. WOODWARD *v.* ALI ET AL. C. A. 2d Cir. Certiorari denied.

No. 20–5354. JORDAN *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–5370. GUILLEN *v.* WASHBURN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5371. FARMER *v.* LEBO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5421. DOWNER *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–5430. MEYERS *v.* JESS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 20–5447. WILSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 20–5458. MARTIN-SOSA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 351.

No. 20–5464. BANKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 186.

No. 20–5476. HORTON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied.

No. 20–5477. IDADA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 132.

No. 20–5482. SORRO *v.* BRNOVICH, ATTORNEY GENERAL OF ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–5487. ADAMS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 20–5496. RAM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–5498. SILVIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 953 F. 3d 139.

No. 20–5507. LANDERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 897.

No. 20–5508. MORAN *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 20–5510. PERNELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 101.

No. 20–5513. MCWILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 589.

No. 20–5519. WANKE *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2019 IL App (2d) 170373–U.

No. 20–5520. WILLIAMSON *v.* MAY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5523. JURY *v.* GRAY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5524. JOHNSON *v.* OHIO. Ct. App. Ohio, 8th App. Dist., Cuyahoga County. Certiorari denied. Reported below: 2018-Ohio-3670, 119 N. E. 3d 914.

No. 20–5530. GORDON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 471.

No. 20–5533. MCNAMARA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 20–5535. PLATT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 804.

No. 20–5540. SANDERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 365.

No. 20–5542. KUGLER *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2019 IL App (3d) 180305, 145 N. E. 3d 690.

No. 20–5543. GALINDO-CABALLERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 299.

No. 20–5548. HOOD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 291.

No. 20–5549. LOPEZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 257.

No. 20–5552. OHIO EX REL. KERR *v.* KELSEY, JUDGE. Sup. Ct. Ohio. Certiorari denied. Reported below: 160 Ohio St. 3d 45, 2020-Ohio-1057, 153 N. E. 3d 42.

No. 20–5553. LAWRENCE *v.* MONTANA. Sup. Ct. Mont. Certiorari denied.

No. 20–5554. EAGLE CHASING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 965 F. 3d 647.

No. 20–5555. EDWARDS *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 2019 IL App (5th) 180300–U.

No. 20–5560. FECHNER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 952 F. 3d 954.

No. 20–5561. HUNNICUTT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 551.

No. 20–5568. ALBERTO CASTRO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 20–5569. GARCIA-TORO *v.* OHIO. Ct. App. Ohio, 8th App. Dist., Cuyahoga County. Certiorari denied. Reported below: 2019-Ohio-5336.

No. 20–5571. PACHECO *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied.

No. 20–5572. WITKIN *v.* LOTERSZTAIN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 770 Fed. Appx. 883.

No. 20–5574. LUIS TORRES *v.* LUTHER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 20–5576. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 960 F. 3d 1007.

No. 20–5577. TIMBERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 927.

No. 20–5580. PHILLIPS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 291 So. 3d 552.

No. 20–5586. ZAMUDIO-SILVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 527.

No. 20–5587. LOVE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 949 F. 3d 406.

No. 20–5590. CHACON-LARA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 322.

No. 20–5595. BOX *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 960 F. 3d 1025.

No. 20–5596. GREEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–5597. SWENSON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 2020 IL 124688.

No. 20–5599. GREENWELL *v.* SAUL, COMMISSIONER OF SOCIAL SECURITY. C. A. 7th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 368.

No. 20–5601. GRINDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 145.

No. 20–5603. GLOVER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 225 A. 3d 1137.

No. 20–5604. ISIBOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 789 Fed. Appx. 76.

No. 20–5606. BROWN *v.* RAMIREZ. C. A. 9th Cir. Certiorari denied.

No. 20–5611. BUXTON *v.* SHAPIRO, ATTORNEY GENERAL OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied.

No. 20–5612. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 318.

No. 20–5614. FELTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 330.

No. 20–5615. GORDON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 954 F. 3d 315.

No. 20–5620. SOTO-BARRAZA ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 20–5622. STARKS *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS. C. A. 7th Cir. Certiorari denied.

No. 20–5623. STEFANYUK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 944 F. 3d 761.

No. 20–5625. WILLIAMS *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–5628. CORONA-VERDUZCO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 963 F. 3d 720.

No. 20–5635. SMITH *v.* WARDEN, FEDERAL CORRECTIONAL INSTITUTION BEAUMONT. C. A. 5th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 272.

No. 20–5636. FIGUEROA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 813 Fed. Appx. 716.

No. 20–5637. PAGE *v.* NEW YORK. Ct. App. N. Y. Certiorari denied.

No. 20–5644. LIMARY *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 2020 ME 83, 235 A. 3d 860.

No. 20–5648. GUIDRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 960 F. 3d 676.

No. 20–5650. CRUZ-RIVERA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 954 F. 3d 410.

No. 20–5652. LOPEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 444.

No. 20–5653. ESPINOZA ESPINOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 246.

No. 20–5654. ACUNA-DUENAS *v.* UNITED STATES (Reported below: 799 Fed. Appx. 888); BOCANEGRA LUPIAN *v.* UNITED

States (808 Fed. Appx. 260); Gutierrez-Rodriguez *v.* United States (802 Fed. Appx. 158); Jaramillo-Vasquez *v.* United States (811 Fed. Appx. 904); Lopez-Barron *v.* United States (805 Fed. Appx. 315); Ortuno-Olea *v.* United States (811 Fed. Appx. 268); Madriz Sandoval *v.* United States (807 Fed. Appx. 398); and Valdez Rojas *v.* United States (799 Fed. Appx. 882). C. A. 5th Cir. Certiorari denied.

No. 20–5655. Richardson *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 268.

No. 20–5656. Ellis *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 780.

No. 20–5658. Racioppi *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 807 Fed. Appx. 153.

No. 20–5660. St. George *v.* Ransom, Superintendent, State Correctional Institution at Dallas, et al. C. A. 3d Cir. Certiorari denied.

No. 20–5666. Mendoza *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 270.

No. 20–5668. Sundberg *v.* Oreol, Executive Director of Patton State Hospital. C. A. 9th Cir. Certiorari denied.

No. 20–5669. George *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 949 F. 3d 1181.

No. 20–5670. Givins *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 929.

No. 20–5681. Sumlin *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 956 F. 3d 879.

No. 20–5685. Sanchez *v.* Silva et al. C. A. 1st Cir. Certiorari denied.

No. 20–5687. Bryant *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 811 Fed. Appx. 712.

No. 20–5688. Berry *v.* Ohio. Ct. App. Ohio, 3d App. Dist., Franklin County. Certiorari denied. Reported below: 2019-Ohio-3902.

No. 20–5692. Wise *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 945 F. 3d 245.

No. 20–5695. DuPree *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied.

No. 20–5704. Borden *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 599 Fed. Appx. 890.

No. 20–5706. Berg *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 956 F. 3d 1213.

No. 20–5709. Cole *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 291.

No. 20–5710. Coca-Ortiz *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 285.

No. 20–5711. Smith-Garcia, fka Atwood *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 822.

No. 20–5717. Bradner *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 450.

No. 20–5720. Garcia-Moreno *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 578.

No. 20–5721. Douprea *v.* Espinoza, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 410.

No. 20–5727. Edwards *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 20–5737. Lewis *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 877.

No. 20–5743. Melendez *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 20–5744. Miller *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 131.

No. 20–5745. Monical *v.* Towers et al. C. A. 9th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 540.

No. 20–5749. Hart *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 737.

No. 20–5756. Chen Xu *v.* City of New York, New York. C. A. 2d Cir. Certiorari denied.

No. 19–1057. RODRIGUEZ ET AL. *v.* CITY OF SAN JOSE, CALIFORNIA, ET AL. C. A. 9th Cir. Motion of Gun Owners of California et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 930 F. 3d 1123.

No. 19–1272. RETZLAFF *v.* VAN DYKE. C. A. 5th Cir. Motion of 16 Media Organizations and Advocacy Groups for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 781 Fed. Appx. 368.

No. 19–1280. IDAHO DEPARTMENT OF CORRECTION ET AL. *v.* EDMO. C. A. 9th Cir. Certiorari denied. Reported below: 935 F. 3d 757.

JUSTICE ALITO, with whom JUSTICE THOMAS joins, dissenting.

I would hold that the case is moot and direct that the decision below be vacated. *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950).

No. 19–1284. MALWAREBYTES, INC. *v.* ENIGMA SOFTWARE GROUP USA, LLC. C. A. 9th Cir. Certiorari denied. Reported below: 946 F. 3d 1040.

Statement of JUSTICE THOMAS respecting the denial of certiorari.

This petition asks us to interpret a provision commonly called §230, a federal law enacted in 1996 that gives Internet platforms immunity from some civil and criminal claims. 47 U. S. C. §230. When Congress enacted the statute, most of today's major Internet platforms did not exist. And in the 24 years since, we have never interpreted this provision. But many courts have construed the law broadly to confer sweeping immunity on some of the largest companies in the world.

This case involves Enigma Software Group USA and Malwarebytes, two competitors that provide software to enable individuals to filter unwanted content, such as content posing security risks. Enigma sued Malwarebytes, alleging that Malwarebytes engaged in anticompetitive conduct by reconfiguring its products to make it difficult for consumers to download and use Enigma products. In its defense, Malwarebytes invoked a provision of §230 that states that a computer service provider cannot be held liable for providing tools "to restrict access to . . . material" that it "considers

to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable." §230(c)(2)(A). The Ninth Circuit relied heavily on the "policy" and "purpose" of §230 to conclude that immunity is unavailable when a plaintiff alleges anticompetitive conduct.

The decision is one of the few where courts have relied on purpose and policy to *deny* immunity under §230. But the court's decision to stress purpose and policy is familiar. Courts have long emphasized nontextual arguments when interpreting §230, leaving questionable precedent in their wake.

I agree with the Court's decision not to take up this case. I write to explain why, in an appropriate case, we should consider whether the text of this increasingly important statute aligns with the current state of immunity enjoyed by Internet platforms.

I

Enacted at the dawn of the dot-com era, §230 contains two subsections that protect computer service providers from some civil and criminal claims. The first is definitional. It states, "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." §230(c)(1). This provision ensures that a company (like an e-mail provider) can host and transmit third-party content without subjecting itself to the liability that sometimes attaches to the publisher or speaker of unlawful content. The second subsection provides direct immunity from some civil liability. It states that no computer service provider "shall be held liable" for (A) good-faith acts to restrict access to, or remove, certain types of objectionable content; or (B) giving consumers tools to filter the same types of content. §230(c)(2). This limited protection enables companies to create community guidelines and remove harmful content without worrying about legal reprisal.

Congress enacted this statute against specific background legal principles. See *Stewart* v. *Dutra Constr. Co.*, 543 U. S. 481, 487 (2005) (interpreting a law by looking to the "backdrop against which Congress" acted). Traditionally, laws governing illegal content distinguished between publishers or speakers (like newspapers) and distributors (like newsstands and libraries). Publishers or speakers were subjected to a higher standard because they

exercised editorial control. They could be strictly liable for transmitting illegal content. But distributors were different. They acted as a mere conduit without exercising editorial control, and they often transmitted far more content than they could be expected to review. Distributors were thus liable only when they knew (or constructively knew) that content was illegal. See, *e. g.*, *Stratton Oakmont, Inc.* v. *Prodigy Services Co.*, 1995 WL 323710, *3 (Sup. Ct. NY, May 24, 1995); Restatement (Second) of Torts § 581 (1976); cf. *Smith* v. *California*, 361 U. S. 147, 153 (1959) (applying a similar principle outside the defamation context).

The year before Congress enacted § 230, one court blurred this distinction. An early Internet company was sued for failing to take down defamatory content posted by an unidentifed commenter on a message board. The company contended that it merely distributed the defamatory statement. But the company had also held itself out as a family-friendly service provider that moderated and took down offensive content. The court determined that the company's decision to exercise editorial control over some content "render[ed] it a publisher" even for content it merely distributed. *Stratton Oakmont*, 1995 WL 323710, *3–*4.

Taken at face value, § 230(c) alters the *Stratton Oakmont* rule in two respects. First, § 230(c)(1) indicates that an Internet provider does not become the publisher of a piece of third-party content—and thus subjected to strict liability—simply by hosting or distributing that content. Second, § 230(c)(2)(A) provides an additional degree of immunity when companies take down or restrict access to objectionable content, so long as the company acts in good faith. In short, the statute suggests that if a company unknowingly leaves up illegal third-party content, it is protected from publisher liability by § 230(c)(1); and if it takes down certain third-party content in good faith, it is protected by § 230(c)(2)(A).

This modest understanding is a far cry from what has prevailed in court. Adopting the too-common practice of reading extra immunity into statutes where it does not belong, see *Baxter* v. *Bracey*, 590 U. S. 1011 (2020) (THOMAS, J., dissenting from denial of certiorari), courts have relied on policy and purpose arguments to grant sweeping protection to Internet platforms. *E. g.*, 1 R. Smolla, Law of Defamation § 4:86, p. 4–380 (2d ed. 2019) ("[C]ourts have extended the immunity in § 230 far beyond anything that plausibly could have been intended by Congress); ac-

cord, Rustad & Koenig, Rebooting Cybertort Law, 80 Wash. L. Rev. 335, 342–343 (2005) (similar). I address several areas of concern.

A

Courts have discarded the longstanding distinction between "publisher" liability and "distributor" liability. Although the text of § 230(c)(1) grants immunity only from "publisher" or "speaker" liability, the frst appellate court to consider the statute held that it eliminates distributor liability too—that is, § 230 confers immunity even when a company distributes content that it *knows* is illegal. *Zeran* v. *America Online, Inc.*, 129 F. 3d 327, 331–334 (CA4 1997). In reaching this conclusion, the court stressed that permitting distributor liability "would defeat the two primary purposes of the statute," namely, "immuniz[ing] service providers" and encouraging "selfregulation." *Id.*, at 331, 334. And subsequent decisions, citing *Zeran*, have adopted this holding as a categorical rule across all contexts. See, *e. g.*, *Universal Communication Systems, Inc.* v. *Lycos, Inc.*, 478 F. 3d 413, 420 (CA1 2007); *Shiamili* v. *Real Estate Group of NY, Inc.*, 17 N. Y. 3d 281, 288–289, 952 N. E. 2d 1011, 1017 (2011); *Doe* v. *Bates*, 2006 WL 3813758, *18 (ED Tex., Dec. 27, 2006).

To be sure, recognizing some overlap between publishers and distributors is not unheard of. Sources sometimes use language that arguably blurs the distinction between publishers and distributors. One source respectively refers to them as "primary publishers" and "secondary publishers or disseminators," explaining that distributors can be "charged with publication." W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts 799, 803 (5th ed. 1984).

Yet there are good reasons to question this interpretation.

First, Congress expressly imposed distributor liability in the very same Act that included § 230. Section 502 of the Communications Decency Act makes it a crime to "knowingly . . . display" obscene material to children, even if a third party created that content. 110 Stat. 133–134 (codifed at 47 U. S. C. § 223(d)). This section is enforceable by civil remedy. 47 U. S. C. § 207. It is odd to hold, as courts have, that Congress implicitly eliminated distributor liability in the very Act in which Congress explicitly imposed it.

Second, Congress enacted § 230 just one year after *Stratton Oakmont* used the terms "publisher" and "distributor," instead

of "primary publisher" and "secondary publisher." If, as courts suggest, *Stratton Oakmont* was the legal backdrop on which Congress legislated, *e. g.*, *FTC* v. *Accusearch Inc.*, 570 F. 3d 1187, 1195 (CA10 2009), one might expect Congress to use the same terms *Stratton Oakmont* used.

Third, had Congress wanted to eliminate both publisher and distributor liability, it could have simply created a categorical immunity in § 230(c)(1): No provider "shall be held liable" for information provided by a third party. After all, it used that exact categorical language in the very next subsection, which governs removal of content. § 230(c)(2). Where Congress uses a particular phrase in one subsection and a different phrase in another, we ordinarily presume that the difference is meaningful. *Russello* v. *United States*, 464 U. S. 16, 23 (1983); cf. *Doe* v. *America Online, Inc.*, 783 So. 2d 1010, 1025 (Fla. 2001) (Lewis, J., dissenting) (relying on this rule to reject the interpretation that § 230 eliminated distributor liability).

B

Courts have also departed from the most natural reading of the text by giving Internet companies immunity for their own content. Section 230(c)(1) protects a company from publisher liability only when content is "provided by *another* information content provider." (Emphasis added.) Nowhere does this provision protect a company that is itself the information content provider. See *Fair Housing Council of San Fernando Valley* v. *Roommates .Com, LLC*, 521 F. 3d 1157, 1165 (CA9 2008). And an information content provider is not just the primary author or creator; it is anyone "responsible, *in whole or in part*, for the creation or development" of the content. § 230(f)(3) (emphasis added).

But from the beginning, courts have held that § 230(c)(1) protects the "exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or *alter* content." *E. g.*, *Zeran*, 129 F. 3d, at 330 (emphasis added); cf. *id.*, at 332 (stating also that § 230(c)(1) protects the decision to "edit"). Only later did courts wrestle with the language in § 230(f)(3) suggesting providers are liable for content they help develop "in part." To harmonize that text with the interpretation that § 230(c)(1) protects "traditional editorial functions," courts relied on policy arguments to narrowly construe § 230(f)(3) to cover only substantial or material edits and additions. *E. g.*, *Batzel* v. *Smith*, 333 F. 3d 1018, 1031, and n. 18 (CA9 2003) ("[A] central purpose

of the Act was to protect from liability service providers and users who take some affr mative steps to edit the material posted").

Under this interpretation, a company can solicit thousands of potentially defamatory statements, "selec[t] and edi[t] . . . for publication" several of those statements, add commentary, and then feature the f nal product prominently over other submissions—all while enjoying immunity. *Jones* v. *Dirty World Entertainment Recordings LLC*, 755 F. 3d 398, 403, 410, 416 (CA6 2014) (interpreting "development" narrowly to "preserv[e] the broad immunity th[at § 230] provides for website operators' exercise of traditional publisher functions"). To say that editing a statement and adding commentary in this context does not "creat[e] or develo[p]" the f nal product, even in part, is dubious.

C

The decisions that broadly interpret § 230(c)(1) to protect traditional publisher functions also eviscerated the narrower liability shield Congress included in the statute. Section 230(c)(2)(A) encourages companies to create content guidelines and protects those companies that "in good faith . . . restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, f lthy, excessively violent, harassing, or otherwise objectionable." Taken together, both provisions in § 230(c) most naturally read to protect companies when they unknowingly *decline* to exercise editorial functions to edit or remove third-party content, § 230(c)(1), and when they *decide* to exercise those editorial functions in good faith, § 230(c)(2)(A).

But by construing § 230(c)(1) to protect *any* decision to edit or remove content, *Barnes* v. *Yahoo!, Inc.*, 570 F. 3d 1096, 1105 (CA9 2009), courts have curtailed the limits Congress placed on decisions to remove content, see *e-ventures Worldwide, LLC* v. *Google, Inc.*, 2017 WL 2210029, *3 (MD Fla., Feb. 8, 2017) (rejecting the interpretation that § 230(c)(1) protects removal decisions because it would "swallo[w] the more specifc immunity in (c)(2)"). With no limits on an Internet company's discretion to take down material, § 230 now apparently protects companies who racially discriminate in removing content. *Sikhs for Justice, Inc.* v. *Facebook, Inc.*, 697 Fed. Appx. 526 (CA9 2017), aff'g 144 F. Supp. 3d 1088, 1094 (ND Cal. 2015) (concluding that "`any activity that can be boiled down to deciding whether to exclude material that

third parties seek to post online is perforce immune'" under § 230(c)(1)).

D

Courts also have extended § 230 to protect companies from a broad array of traditional product-defect claims. In one case, for example, several victims of human traffck ing alleged that an Internet company that allowed users to post classifed ads for "Escorts" deliberately structured its website to facilitate illegal human traffck ing. Among other things, the company "tailored its posting requirements to make sex traffck ing easier," accepted anonymous payments, failed to verify e-mails, and stripped metadata from photographs to make crimes harder to track. *Jane Doe No. 1* v. *Backpage.com, LLC*, 817 F. 3d 12, 16–21 (CA1 2016). Bound by precedent creating a "capacious conception of what it means to treat a website operator as the publisher or speaker," the court held that § 230 protected these website design decisions and thus barred these claims. *Id.*, at 19; see also *M. A.* v. *Village Voice Media Holdings, LLC*, 809 F. Supp. 2d 1041, 1048 (ED Mo. 2011).

Consider also a recent decision granting full immunity to a company for recommending content by terrorists. *Force* v. *Facebook, Inc.*, 934 F. 3d 53, 65 (CA2 2019), cert. denied, 590 U. S. 942 (2020). The court frst pressed the policy argument that, to pursue "Congress's objectives, . . . the text of Section 230(c)(1) should be construed broadly in favor of immunity." 934 F. 3d, at 64. It then granted immunity, reasoning that recommending content "is an essential result of publishing." *Id.*, at 66. Unconvinced, the dissent noted that, even if all publisher conduct is protected by § 230(c)(1), it "strains the English language to say that in targeting and recommending these writings to users . . . Facebook is acting as `the *publisher* of . . . information provided by another information content provider.'" *Id.*, at 76–77 (Katzmann, C. J., concurring in part and dissenting in part) (quoting § 230(c)(1)).

Other examples abound. One court granted immunity on a design-defect claim concerning a dating application that allegedly lacked basic safety features to prevent harassment and impersonation. *Herrick* v. *Grindr LLC*, 765 Fed. Appx. 586, 591 (CA2 2019), cert. denied, 589 U. S. 977 (2019). Another granted immunity on a claim that a social media company defectively designed its product by creating a feature that encouraged reckless driving.

Lemmon v. *Snap, Inc.*, 440 F. Supp. 3d 1103, 1107, 1113 (CD Cal. 2020).

A common thread through all these cases is that the plaintiffs were not necessarily trying to hold the defendants liable "as the publisher or speaker" of third-party content. § 230(c)(1). Nor did their claims seek to hold defendants liable for removing content in good faith. § 230(c)(2). Their claims rested instead on alleged product design faws—that is, the defendant's own misconduct. Cf. *Accusearch*, 570 F. 3d, at 1204 (Tymkovich, J., concurring) (stating that § 230 should not apply when the plaintiff sues over a defendant's "*conduct* rather than for the *content* of the information"). Yet courts, f ltering their decisions through the policy argument that "Section 230(c)(1) should be construed broadly," *Force*, 934 F. 3d, at 64, give defendants immunity.

II

Paring back the sweeping immunity courts have read into § 230 would not necessarily render defendants liable for online misconduct. It simply would give plaintiffs a chance to raise their claims in the frst place. Plaintiffs still must prove the merits of their cases, and some claims will undoubtedly fail. Moreover, States and the Federal Government are free to update their liability laws to make them more appropriate for an Internet-driven society.

Extending § 230 immunity beyond the natural reading of the text can have serious consequences. Before giving companies immunity from civil claims for "knowingly host[ing] illegal child pornography," *Bates*, 2006 WL 3813758, *1, or for race discrimination, *Sikhs for Justice*, 697 Fed. Appx., at 526, we should be certain that is what the law demands.

Without the beneft of brief ng on the merits, we need not decide today the correct interpretation of § 230. But in an appropriate case, it behooves us to do so.

No. 19–1291. HAMNER *v.* BURLS, WARDEN, ET AL. C. A. 8th Cir. Motion of Federal Corrections Directors for leave to f le brief as *amici curiae* granted. Certiorari denied. Reported below: 937 F. 3d 1171.

No. 20–100. BARTH *v.* BERNARDS TOWNSHIP PLANNING BOARD ET AL. Super. Ct. N. J., App. Div. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 20–154. BYZON ET AL. *v.* PNC BANK, N. A., SUCCESSOR BY MERGER TO NATIONAL CITY BANK. Super. Ct. Pa. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 221 A. 3d 1272.

No. 20–227. MADEJ ET AL. *v.* MAIDEN, ATHENS COUNTY ENGINEER. C. A. 6th Cir. Motion of Disability Rights Organizations for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 951 F. 3d 364.

No. 20–259. MINHNGA NGUYEN *v.* BOEING CO. C. A. 9th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 809 Fed. Appx. 380.

No. 20–318. EQUAL MEANS EQUAL ET AL. *v.* FERRIERO, ARCHIVIST OF THE UNITED STATES. C. A. 1st Cir. Certiorari before judgment denied.

No. 20–5332. BUSH *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari before judgment denied.

No. 20–5564. AKEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 787 Fed. Appx. 1002.

No. 20–5583. CROSBY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 814 Fed. Appx. 431.

No. 20–5661. SHELTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 19–8246. THOMAS *v.* CORBETT ET AL., 590 U. S. 994. Petition for rehearing denied.

No. 19–1004. JAFFE *v.* SHERMAN, UNITED STATES CONGRESSMAN, 590 U. S. 905; and

No. 19–7624. SHAW *v.* UNITED STATES, 589 U. S. 1286. Motions for leave to file petitions for rehearing denied.

October 16, 2020

Probable Jurisdiction Postponed

No. 20–366. Trump, President of the United States, et al. *v.* New York et al. Appeal from D. C. S. D. N. Y. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Case is set for argument on Monday, November 30, 2020. Appellants' brief on the merits, and any *amicus curiae* briefs in support of appellants or in support of neither party, shall be filed on or before Friday, October 30, 2020. Appellees' briefs on the merits, and any *amicus curiae* briefs in support of appellees, shall be filed on or before Monday, November 16, 2020. Reply brief shall be filed by 2 p.m., Monday, November 23, 2020.

October 19, 2020

Certiorari Dismissed

No. 20–5451. Tyler *v.* North Carolina. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 801 Fed. Appx. 139.

No. 20–5480. Ball *v.* Doe et al. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 790 Fed. Appx. 223.

No. 20–5497. Simpson *v.* Court of Common Pleas of Ohio, Hamilton County, et al. Sup. Ct. Ohio. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 158 Ohio St. 3d 1509, 2020-Ohio-2815, 144 N. E. 3d 459.

No. 20–5659. Robles *v.* Wilkie, Secretary of Veterans Affairs. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 815 Fed. Appx. 527.

Miscellaneous Orders

No. 20A53. Scarnati et al. *v.* Boockvar, Secretary of Pennsylvania, et al. Sup. Ct. Pa. Application for stay, presented to Justice Alito, and by him referred to the Court, de-

nied. JUSTICE THOMAS, JUSTICE ALITO, JUSTICE GORSUCH, and JUSTICE KAVANAUGH would grant the application.

No. 20A54. REPUBLICAN PARTY OF PENNSYLVANIA *v.* BOOCKVAR, SECRETARY OF PENNSYLVANIA, ET AL. Sup. Ct. Pa. Application for stay, presented to JUSTICE ALITO, and by him referred to the Court, denied. JUSTICE THOMAS, JUSTICE ALITO, JUSTICE GORSUCH, and JUSTICE KAVANAUGH would grant the application.

No. 20M28. MARCUS *v.* MARCUS;

No. 20M29. WARREN *v.* KENNECTION INSTALLATION, LLC, ET AL.;

No. 20M30. SYKES *v.* NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES ET AL.;

No. 20M31. STRINGER *v.* LINCOLN COUNTY JAIL ET AL.; and

No. 20M32. ROSE *v.* DEPARTMENT OF JUSTICE. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 19–5807. EDWARDS *v.* VANNOY, WARDEN. C. A. 5th Cir. [Certiorari granted, 590 U. S. 929.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 20–28. PRICEWATERHOUSECOOPERS LLP ET AL. *v.* LAURENT, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL. C. A. 2d Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 20–5532. GOLDEN *v.* UNITED STATES. C. A. Fed. Cir.; and

No. 20–5539. RUMZIS *v.* SAUL, COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 9, 2020, within which to pay the docketing fees required by this Court's Rule 38(a).

No. 20–5837. IN RE OBERWISE. Petition for writ of habeas corpus denied.

No. 20–5365. IN RE N'JAI; and

No. 20–5367. IN RE MOHAMMED. Petitions for writs of mandamus denied.

No. 20–5406. IN RE MOHAMMED. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 19–1212. WOLF, ACTING SECRETARY OF HOMELAND SECURITY, ET AL. *v.* INNOVATION LAW LAB ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 951 F. 3d 1073.

No. 20–18. LANGE *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist., Div. 5. Certiorari granted.

No. 20–138. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* SIERRA CLUB ET AL.; and TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 963 F. 3d 874 (frst judgment) and 926 (second judgment).

Certiorari Denied

No. 19–1260. DEMMA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 948 F. 3d 722.

No. 19–1323. B. E. TECHNOLOGY, L. L. C. *v.* FACEBOOK, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 940 F. 3d 675.

No. 19–1357. ANGEL PEREZ *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 19–8832. VAN DER END *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 943 F. 3d 98.

No. 20–22. BHAI, AKA VIRANI, ET AL. *v.* BARR, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 269.

No. 20–39. AVIC INTERNATIONAL HOLDING CORP. ET AL. *v.* SOARING WIND ENERGY, L. L. C., ET AL.; and

No. 20–40. CATIC USA INC. *v.* SOARING WIND ENERGY, L. L. C., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 3d 742.

No. 20–147. BROWN *v.* U. S. BANK N. A. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 732.

No. 20–149. UZAMERE *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 20–151. BLESSETT *v.* GARCIA. C. A. 5th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 945.

No. 20–152. WULLSCHLEGER ET AL. *v.* ROYAL CANIN U. S. A., INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 953 F. 3d 519.

No. 20–156. CONNORS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 20–161. CITY OF SACRAMENTO, CALIFORNIA, ET AL. *v.* MANN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 142.

No. 20–164. JOHNSON *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 291 So. 3d 1233.

No. 20–170. HAN *v.* HANKOOK TIRE CO., LTD. C. A. 6th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 347.

No. 20–180. GEORGE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 20–182. STANBACK ET AL. *v.* HUMPHREY, AS PARENT AND LEGAL GUARDIAN OF MINOR CHILD, O. H., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 792 Fed. Appx. 395.

No. 20–184. ELLERBEE *v.* ANNETT HOLDINGS, INC., DBA TMC TRANSPORTATION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 788 Fed. Appx. 188.

No. 20–192. SERAFINE *v.* CRUMP ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 234.

No. 20–194. COX *v.* TEXAS WORKFORCE COMMISSION ET AL. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 20–212. CANUTO *v.* PELOSI ET AL. C. A. D. C. Cir. Certiorari denied.

No. 20–215. BERNHOLZ *v.* INTERNAL REVENUE SERVICE. C. A. 2d Cir. Certiorari denied. Reported below: 801 Fed. Appx. 45.

No. 20–224. PITCH, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF PITCH, ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 953 F. 3d 1226.

No. 20–230. BAKER *v.* IANCU, DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 552.

No. 20–233. HMONG 2 ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 508.

No. 20–258. MEDINA *v.* FEDERAL AVIATION ADMINISTRATION. C. A. Fed. Cir. Certiorari denied.

No. 20–274. BUENO *v.* UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES. C. A. 11th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 651.

No. 20–279. TORRES, AKA TORRES MEDINA *v.* BARR, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 572.

No. 20–295. HI-TECH PHARMACEUTICALS, INC., ET AL. *v.* FOOD AND DRUG ADMINISTRATION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 936 F. 3d 1341.

No. 20–311. WALTON *v.* FIRST MERCHANT'S BANK. C. A. 7th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 450.

No. 20–368. HALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 214.

No. 20–376. DNF ASSOCIATES, LLC *v.* MCADORY. C. A. 9th Cir. Certiorari denied. Reported below: 952 F. 3d 1089.

No. 20–387. HOWARD *v.* DEFRATES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 376.

No. 20–5072. NEWBERRY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 288 So. 3d 1040.

No. 20–5087. NAPA MOREIRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 702.

No. 20–5263. SCHROEDER *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 305 Neb. 527, 941 N. W. 2d 445.

No. 20–5368. OYIBO *v.* HUNTINGTON HOSPITAL ET AL. C. A. 2d Cir. Certiorari denied.

No. 20–5378. STYERS *v.* SHINN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 20–5383. GRIGSBY *v.* NEVEN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–5384. GRANT *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied.

No. 20–5386. HAWKINS *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5387. AUGUSTIN *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 20–5397. BANKS *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 20–5399. LATIMER, AKA SMITH *v.* JONES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 241.

No. 20–5413. ENGLISH *v.* GENTRY, JUDGE, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY, ET AL. Sup. Ct. Ariz. Certiorari denied.

No. 20–5414. LEWIS *v.* SEVENTH CIRCUIT COURT, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 464.

No. 20–5419. DYER *v.* SMITH, WARDEN, ET AL. Sup. Ct. Ga. Certiorari denied.

No. 20–5420. SUAREZ CLARK *v.* REPUBLIC OF PERU. C. A. D. C. Cir. Certiorari denied. Reported below: 801 Fed. Appx. 797.

No. 20–5425. GAMBLE *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 179 App. Div. 3d 580, 117 N. Y. S. 3d 580.

No. 20–5426. MOSS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 20–5438. ROBINSON *v.* GEISINGER HOSPITAL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 814 Fed. Appx. 670.

No. 20–5443. RONDEAU *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 139 N. E. 3d 749.

No. 20–5448. WILLIAMS *v.* POLLARD, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 20–5449. DAWSON *v.* PAKENHAM. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 20–5456. ROBERTSON *v.* PACE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 955.

No. 20–5460. CALVIN *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–5463. ROGERS *v.* SKIPPER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 500.

No. 20–5491. M. C. *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 134 N. E. 3d 453.

No. 20–5494. SNOW *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 137 N. E. 3d 965.

No. 20–5503. MARTIN *v.* NICHOLSON. C. A. 7th Cir. Certiorari denied.

No. 20–5504. MARTIN *v.* CAPRON ET AL. C. A. 7th Cir. Certiorari denied.

No. 20–5506. LOPEZ *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 134 N. E. 3d 73.

No. 20–5514. NELSON *v.* BROWN, ACTING WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5525. BAILEY *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied.

No. 20–5528. ROMERO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 2. Certiorari denied. Reported below: 44 Cal. App. 5th 381, 257 Cal. Rptr. 3d 537.

No. 20–5536. MCKINNEY *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2019–01569 (La. 5/26/20), 296 So. 3d 1011.

No. 20–5544. JACKSON *v.* SAUL, COMMISSIONER OF SOCIAL SECURITY. C. A. 7th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 383.

No. 20–5546. CARRYL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 20–5585. NIKOLLA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 950 F. 3d 51.

No. 20–5613. SMITH *v.* NAGY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 962 F. 3d 192.

No. 20–5630. THACKER *v.* INDIANA. Sup. Ct. Ind. Certiorari denied.

No. 20–5647. MOYNIHAN *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–5676. VENEGAS *v.* REWERTS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5690. LOFF *v.* BRNOVICH, ATTORNEY GENERAL OF ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–5707. REEVES *v.* ESPER, SECRETARY OF DEFENSE, ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–5714. KOSHMIDER *v.* LESATZ, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5719. CRUZ *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–5730. BUTLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 311.

No. 20–5738. WASHINGTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 332.

No. 20–5739. ROTHENBERG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 771.

No. 20–5740. MAHAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 292.

No. 20–5741. SANCHEZ-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 319.

No. 20–5751. FERNANDEZ-DE CAMPA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 743.

No. 20–5752. FAULKNER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–5753. REDD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 20–5757. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–5759. WILLIAMSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 20–5770. BRIDGEWATER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 20–5783. LEE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–5785. COOK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 20–5791. ANTHONY MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–5793. ZENDEJAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 20–5794. WILBERT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 20–5816. ACEVEDO-LEMUS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 19–1298. ROGERS COUNTY BOARD OF TAX ROLL CORRECTIONS ET AL. *v.* VIDEO GAMING TECHNOLOGIES, INC. Sup. Ct. Okla. Certiorari denied. Reported below: 2019 OK 83, 475 P. 3d 824.

JUSTICE THOMAS, dissenting.

Earlier this year, the Court "disregard[ed] the `well settled' approach required by our precedents" and transformed half of Oklahoma into tribal land. *McGirt* v. *Oklahoma*, 591 U. S. 894, 939 (2020) (ROBERTS, C. J., dissenting). That decision "profoundly destabilized the governance of eastern Oklahoma" and "create[d] signifcant uncertainty" about basic government functions like "taxation." *Id.*, at 938. The least we could do now is mitigate some of that uncertainty.

This case presents a square conf ict on an important question: Does federal law silently pre-empt state laws assessing taxes on

ownership of electronic gambling equipment when that equipment is located on tribal land but owned by non-Indians? Here, the Oklahoma Supreme Court said yes. But a few years earlier, the Second Circuit said no. *Mashantucket Pequot Tribe* v. *Ledyard*, 722 F. 3d 457 (2013). This disagreement alone merits review.

"[T]axes are the life-blood of government, and their prompt and certain availability an imperious need." *Bull* v. *United States*, 295 U. S. 247, 259 (1935). By enjoining a tax on ownership of property, the Oklahoma Supreme Court has disrupted funding for schools, health departments, and law enforcement. And although this case concerns only electronic gambling equipment, it injects uncertainty about whether state and local governments can tax the ownership of many other kinds of property located on millions of acres of now-tribal land. The sooner localities in Oklahoma receive a clear answer, the sooner they can plan accordingly and avoid serious funding shortfalls.

This case also presents an opportunity to clear up tension among courts about how to apply pre-emption principles at the intersection of federal law, state law, and tribal land. This Court has created a "fexible" test for evaluating whether federal law implicitly pre-empts state taxation of non-Indians on tribal land. *Cotton Petroleum Corp.* v. *New Mexico*, 490 U. S. 163, 176 (1989). But our "fexible" test has provided little guidance other than that courts should balance federal, tribal, and state interests. *White Mountain Apache Tribe* v. *Bracker*, 448 U. S. 136, 142, 144–145 (1980). This vague test is no prescription for the "certain availability" of tax revenue. *Bull*, 295 U. S., at 259.

Because the Court declines to take up this case, geographical happenstance will continue to play an outsized role in a State's ability to raise revenues, and pre-emption law will remain amorphous. "The State of Oklahoma deserves more respect under our Constitution's federal system" than we give it today. *McGirt*, 591 U. S., at 796 (THOMAS, J., dissenting). I respectfully dissent from the Court's decision to deny certiorari.

No. 19–1301. BOVAT *v.* VERMONT. Sup. Ct. Vt. Certiorari denied. Reported below: 2019 VT 81, 224 A. 3d 103.

Statement of JUSTICE GORSUCH, with whom JUSTICE SOTOMAYOR and JUSTICE KAGAN join, respecting the denial of certiorari.

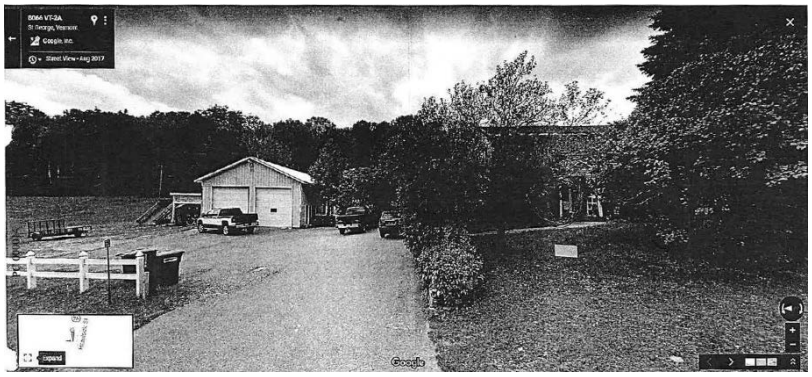
The "knock and talk" is an increasingly popular law enforcement tool, and it's easy to see why. All an offcer has to do is

approach a home's front door, knock, and win the homeowner's consent to a search. Because everything is done with permission, there's usually no need to bother with a warrant, or worry whether exigent circumstances might forgive one's absence. After all, the Fourth Amendment protects against *unreasonable* searches, and consensual searches are rarely that.

But with the rise of the knock and talk have come more and more cases testing the boundaries of the consent on which they depend. Sometimes, offcers appear with overbearing force or otherwise seek to suggest that a homeowner has no choice but to cooperate. Other times, offcers fail to head directly to the front door to speak with the homeowner, choosing to wander the property frst to search for whatever they can f nd.

This Court addressed the second sort of problem in *Florida* v. *Jardines*, 569 U. S. 1 (2013). There, the Court recognized that a home's "curtilage," the area immediately surrounding it, is protected by the Fourth Amendment much like the home itself. *Id.*, at 6. So, to comply with the Constitution, law enforcement agents not only need a warrant, exigent circumstances, or consent to enter a home, they usually need one of those things to reach the home's front door in the frst place. After surveying the Fourth Amendment's original meaning and history, *Jardines* acknowledged that a doorbell or knocker on the front door often signals a homeowner's consent allowing visitors to "approach the home by the front path, knock promptly, wait briefy to be received, and then (absent invitation to linger longer) leave." *Id.*, at 8. The Court recognized, too, that law enforcement agents, like everyone else, may take up this "implied license" to approach. But, the Court stressed, offcers may not abuse the limited scope of this license by snooping around the premises on their way to the front door. Whether done by a private person or a law enforcement agent, that kind of conduct is an unlawful trespass—and, when conducted by the government, it amounts to an unreasonable search in violation of the Fourth Amendment. On this much, the Court unanimously agreed. See *id.*, at 19 (ALITO, J., dissenting) ("A visitor cannot traipse through the garden, meander into the backyard, or take other circuitous detours that veer from the pathway that a visitor would customarily use"); *id.*, at 20 ("The license is limited to the amount of time it would customarily take to approach the door, pause long enough to see if someone is home, and (if not expressly invited to stay longer) leave").

It's hard to see how the case before us could have been decided without reference to *Jardines*. Suspecting Clyde Bovat of unlawfully hunting a deer at night (Vermont calls it a "deer jacking"), game wardens decided to pay him a visit to—in their words—"investigate further." But the wardens admit that "pretty soon after arriving " they focused on a window in Mr. Bovat's detached garage. Heading there and peering inside, the wardens spotted what they thought could be deer hair on the tailgate of a parked truck.



App. to Pet. for Cert. 53a.

Nor, apparently, was this detour a brief one. According to Mr. Bovat's wife, the wardens lingered on the property for perhaps f fteen minutes and never even made it to the front door. Instead, after watching from inside, *she* f nally decided to go out to speak with the wardens—and it was only *then* they f nally sought consent for a search. Mrs. Bovat refused the request, but by that point, of course, the whole exercise of seeking consent was pointless—the wardens had all they needed, forget about any knock or talk. They left the property only to return promptly with a search warrant premised on what they had seen through the garage window.

For reasons that remain unclear, the Vermont Supreme Court analyzed the propriety of the wardens' conduct without mentioning *Jardines*. Instead, the court held that the offcers' initial visit and search of the property was perfectly appropriate in light of the "plain view" doctrine—the commonsense principle that the Fourth Amendment doesn't normally require an offcer to ignore

what he sees lying before him. But that doctrine applies only when an offcer f nds himself in a place he is lawfully permitted to occupy. No one, after all, thinks an offcer can unlawfully break into a home, witness illegal activity, and then claim the beneft of the plain view doctrine. So, in an effort to suggest the wardens' lingering at the garage window was lawful, the Vermont Supreme Court proceeded to cite one of its pre-*Jardines* cases for the notion that driveways constitute "semiprivate areas" within the curtilage, and "`observations made from such'" areas "`are not covered by the Fourth Amendment.'" 2019 VT 81, ¶18, 211 Vt. 301, 308, 224 A. 3d 103, 108 (quoting *State* v. *Pike*, 143 Vt. 283, 288, 465 A. 2d 1348, 1351 (1983)). The upshot? Under the court's logic, it seems, an offcer who keeps ten toes in a home's driveway may stay and search just as he pleases.

None of this is easy to square with *Jardines*, and that case's teachings almost certainly required a different result. Maybe a court could have discredited Mrs. Bovat's testimony about how long the wardens wandered around the garage. Maybe a court could have attempted to offer some explanation why items viewable only through a garage window were within the "plain view" of visitors proceeding directly and without delay from the street to the front door. But it seems a good deal more likely that any court applying *Jardines* would have agreed with Chief Justice Reiber, who explained in dissent that the wardens exceeded the scope of their implied license to approach the front door by heading to the garage and spending so much time peering through its window. As Chief Justice Reiber noted, *Jardines* plainly held that the home's curtilage and observations made anywhere within its bounds *are* covered by the Fourth Amendment; no exceptions. And the Fourth Amendment hardly tolerates the sort of meandering search that took place here. The wardens violated the Constitution, and the warrant they received premised on the fruits of their unlawful search was thus tainted.

Despite the Vermont Supreme Court's error, I acknowledge that understandable reasons exist for my colleagues' decision to let this case go. For one, it is unclear whether *Jardines*'s message about the protections due a home's curtilage has so badly eluded other state or federal courts. For another, there might be reason to hope that, while Vermont missed *Jardines* in one deer-jacking case, its oversight will prove a stray mistake. But however all that may be, the error here remains worth highlight-

ing to ensure it does not recur. Under *Jardines*, there exist no "semiprivate areas" within the curtilage where governmental agents may roam from edge to edge. Nor does *Jardines* afford offcers a f fteen-minute grace period to run around collecting as much evidence as possible before the clock runs out or the homeowner intervenes. The Constitution's historic protections for the sanctity of the home and its surroundings demand more respect from us all than was displayed here.

No. 20–153. BLESSETT *v.* OFFICE OF THE ATTORNEY GENERAL OF TEXAS. C. A. 5th Cir. Certiorari before judgment denied.

No. 20–241. JORDAN *v.* DEPARTMENT OF LABOR. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition.

No. 20–5565. WEIDRICK *v.* TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 2d Cir. Certiorari before judgment denied.

No. 20–5755. JONES *v.* GOOGLE LLC. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition.

Rehearing Denied

No. 19–8232. JACKSON *v.* MISSISSIPPI, 590 U. S. 963;

No. 19–8279. LAGASSE *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, 590 U. S. 963;

No. 19–8280. JAIME JIMENEZ *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 591 U. S. 1005;

No. 19–8348. KEHANO *v.* HARRINGTON, WARDEN, ET AL., 591 U. S. 1019; and

No. 19–8357. LOUT *v.* MONTANA, 591 U. S. 1019. Petitions for rehearing denied.

OCTOBER 21, 2020

Miscellaneous Order

No. 20A67. MERRILL, ALABAMA SECRETARY OF STATE, ET AL. *v.* PEOPLE FIRST OF ALABAMA ET AL. D. C. N. D. Ala. Application for stay, presented to JUSTICE THOMAS, and by him referred to the Court, granted, and the District Court's September 30,

2020, order granting permanent injunction is stayed pending disposition of the appeal in the United States Court of Appeals for the Eleventh Circuit and disposition of the petition for writ of certiorari, if such writ is timely sought. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

JUSTICE SOTOMAYOR, with whom JUSTICE BREYER and JUSTICE KAGAN join, dissenting.

This stay application arises from the Alabama secretary of state's decision to ban curbside voting despite the ongoing COVID–19 crisis and the willingness of certain Alabama counties to assist voters with disabilities. Following a lengthy trial and resting on an extensive record, the District Court found, among other things, that the secretary's ban violates the Americans with Disabilities Act (ADA) by forcing voters with disabilities, for whom COVID–19 is disproportionately likely to be fatal, to risk unnecessary exposure to the virus if they wish to vote in person. The District Court enjoined the secretary's ban, thus allowing counties that are ready to adopt curbside voting to do so. I would not upset the District Court's record-based, reasoned, and narrowly tailored judgment, which the Court of Appeals for the Eleventh Circuit let stand.[1]

The severity of the COVID–19 pandemic should, by now, need no elaboration. As of October 20, 2020, Alabama's Department of Public Health has identifed 174,528 cases of COVID–19 in the State, leading to 19,801 hospitalizations and 2,805 deaths.[2] Those fg ures include about 37,000 new cases and 400 more deaths since the District Court issued its f ndings of fact less than a month ago. See 491 F. Supp. 3d 1076, 1093 (ND Ala. 2020). COVID–19 presents particularly serious risks for those with chronic medical conditions. As Alabama

[1] The District Court also held that the ban on curbside voting violates the plaintiffs' fundamental right to vote under the First and Fourteenth Amendments. Because I believe the injunction was appropriate under the ADA, I do not address the constitutional issues.

[2] Alabama Dept. of Public Health, Characteristics of COVID–19 Cases (Oct. 20, 2020), https://www.alabamapublichealth.gov/covid19/assets/cov-al-cases-102020.pdf.

State Health Offcer Dr. Scott Harris warned, "`[c]hronic disease factors are a real risk for dying from this disease, and chronic diseases are found in about a third of our citizens.'" *Id.*, at 1096. Over 95 percent of Alabamians who have died from COVID–19 had underlying health conditions that made them especially vulnerable to that virus. *Ibid.*

To combat the spread of COVID–19, the Centers for Disease Control and Prevention recommend that States consider curbside voting, that is, permit voters to vote from their car by handing their ballot to a poll worker. *Id.*, at 1130. This is no radical recommendation: The Department of Justice has sanctioned curbside voting as a remedy to ADA violations, see Dept. of Justice, Project Civic Access Fact Sheet, https://www.ada.gov/civicfac.htm, and some 28 States and the District of Columbia already permit curbside voting, see App. to Brief for American Diabetes Association et al. as *Amici Curiae* 1–3. The Alabama secretary of state, however, has prohibited counties from offering curbside voting, even for voters with disabilities for whom COVID–19 is disproportionately likely to be fatal. If those vulnerable voters wish to vote in person, they must wait inside, for as long as it takes, in a crowd of fellow voters whom Alabama does not require to wear face coverings. See 491 F. Supp. 3d, at 1100–1101.

On May 1, 2020, several at-risk Alabama voters and associated organizations sued to enjoin that ban, along with other restrictive voting laws not at issue here. The District Court expedited discovery and held a trial from September 8 to 18. *Id.*, at 1092. Based on the trial evidence, the District Court concluded, in relevant part, that the secretary's ban on curbside voting violated the ADA and that a policy allowing, but not requiring, counties to implement curbside voting was a reasonable accommodation. The Eleventh Circuit upheld that portion of the District Court's injunction. See *People First of Ala.* v. *Secretary of State for Ala.*, 2020 WL 6074333, *1 (CA11, Oct. 13, 2020). The secretary, among others, now seeks a stay of that decision.

I would deny the stay. The secretary has not shown any legal error below. We should not substitute the District Court's reasonable, record-based f ndings of fact with our own intuitions about the risks of traditional in-person voting during this pandemic or the ability of willing local offcia ls to implement adequate curbside voting procedures.

The District Court for good reason found that the secretary's ban deprives disabled voters of the equally effective "opportunity to participate in" the "beneft" of in-person voting. 28 CFR § 35.130(b)(1)(ii) (2019). The secretary does not meaningfully dispute that the plaintiffs have disabilities, that COVID–19 is disproportionately likely to be fatal to these plaintiffs, and that traditional in-person voting will meaningfully increase their risk of exposure. He argues only that the relevant "beneft" under the ADA is voting generally, not in-person voting specifca lly, and that absentee voting ensures access to that beneft. But under the ADA, "[t]he beneft itself . . . cannot be def ned in a way that effectively denies otherwise qualifed handicapped individuals the meaningful access to which they are entitled." *Alexander* v. *Choate*, 469 U. S. 287, 301 (1985). In-person voters receive assistance from poll workers; need no witnesses, notaries, or copies of their photo IDs, as Alabama law requires for absentee ballots; and know their ballot will not arrive too late or be rejected for failure to comply with absentee ballots' many requirements. 491 F. Supp. 3d, at 1159. Absentee and in-person voting are different benefts, and voters with disabilities are entitled to equal access to both.

The District Court's modest injunction is a reasonable accommodation, given the short time before the election. It does not require all counties to adopt curbside voting; it simply gives prepared counties the option to do so. This remedy respects both the right of voters with disabilities to vote safely and the State's interest in orderly elections. The District Court's compromise likewise does not risk creating "voter confusion and consequent incentive to remain away from the polls." *Purcell* v. *Gonzalez*, 549 U. S. 1, 4–5 (2006) (*per curiam*). The injunction lifts burdensome requirements rather than imposing them, and permits county offcia ls to help educate voters about whether curbside voting is available in their county. See 491 F. Supp. 3d, at 1141. Moreover, the injunction neither invalidates state law nor prohibits the secretary from issuing guidance consistent with the District Court's ruling. *Id.*, at 1142–1143, 1162–1163.

Plaintiff Howard Porter, Jr., a Black man in his seventies with asthma and Parkinson's Disease, told the District Court: "`[S]o many of my [ancestors] even died to vote. And while I don't mind dying to vote, I think we're past that—we're past that time.' " *Id.*, at 1104, 1109. Election offcia ls in at least Montgom-

ery and Jefferson Counties agree. They are ready and willing to help vulnerable voters like Mr. Porter cast their ballots without unnecessarily risking infection from a deadly virus. This Court should not stand in their way. I respectfully dissent.

October 26, 2020

Miscellaneous Orders

No. 20A64. Swenson et al. *v.* Wisconsin State Legislature et al. C. A. 7th Cir. Application to vacate stay, presented to Justice Kavanaugh, and by him referred to the Court, denied.

Justice Kagan, with whom Justice Breyer and Justice Sotomayor join, dissenting.

I dissent for the reasons set out in *Democratic National Committee* v. *Wisconsin State Legislature*, 592 U. S. 1039, 1056 (2020) (Kagan, J., dissenting from denial of application to vacate stay).

No. 20A65. Gear et al. *v.* Wisconsin State Legislature et al. C. A. 7th Cir. Application to vacate stay, presented to Justice Kavanaugh, and by him referred to the Court, denied.

No. 20A66. Democratic National Committee et al. *v.* Wisconsin State Legislature et al. C. A. 7th Cir. Application to vacate stay, presented to Justice Kavanaugh, and by him referred to the Court, denied.

Chief Justice Roberts, concurring.

In this case, as in several this Court has recently addressed, a District Court intervened in the thick of election season to enjoin enforcement of a State's laws. Because I believe this intervention was improper, I agree with the decision of the Seventh Circuit to stay the injunction pending appeal. I write separately to note that this case presents different issues than the applications this Court recently denied in *Scarnati* v. *Boockvar*, 592 U. S. 1022 (2020), and *Republican Party of Pennsylvania* v. *Boockvar*, 592 U. S. 1023 (2020). While the Pennsylvania applications implicated the authority of state courts to apply their own constitutions to election regulations, this case involves federal intrusion on state lawmaking processes. Different bodies of law and different precedents govern these two situations and require, in these particular circum-

stances, that we allow the modifcati on of election rules in Pennsylvania but not Wisconsin.

JUSTICE GORSUCH, with whom JUSTICE KAVANAUGH joins, concurring.

Weeks before a national election, a Federal District Judge decreed that Wisconsin law violates the Constitution by requiring absentee voters to return their ballots no later than election day. The court issued its ruling even though over 30 States have long enforced the very same absentee voting deadline—and for understandable reasons: Elections must end sometime, a single deadline supplies clear notice, and requiring ballots be in by election day puts all voters on the same footing. "Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections," and States have always required voters "to act in a timely fashion if they wish to express their views in the voting booth." *Burdick* v. *Takushi*, 504 U. S. 428, 433, 438 (1992).

Why did the district court seek to scuttle such a long-settled tradition in this area? COVID. Because of the current pandemic, the court suggested, it was free to substitute its own election deadline for the State's. Never mind that, in response to the pandemic, the Wisconsin Elections Commission decided to mail registered voters an absentee ballot application and return envelope over the summer, so no one had to ask for one. Never mind that voters have also been free to seek and return absentee ballots since September. Never mind that voters may return their ballots not only by mail but also by bringing them to a county clerk's offce , or various "no touch" drop boxes staged locally, or certain polling places on election day. Never mind that those unable to vote on election day have still other options in Wisconsin, like voting in-person during a 2-week voting period before election day. And never mind that the court itself found the pandemic posed an insuffcient threat to the health and safety of voters to justify revamping the State's in-person election procedures.

So it's indisputable that Wisconsin has made considerable efforts to accommodate early voting and respond to COVID. The district court's only possible complaint is that the State hasn't done *enough*. But how much is enough? If Wisconsin's statutory absentee voting deadline can be discarded on the strength of

the State's status as a COVID "hotspot," what about the identical deadlines in 30 other States? How much of a "hotspot" must a State (or maybe some sliver of it) be before judges get to improvise? Then there's the question what these new ad hoc deadlines should be. The judge in this case tacked 6 days onto the State's election deadline, but what about 3 or 7 or 10, and what's to stop different judges choosing (as they surely would) different deadlines in different jurisdictions? A widely shared state policy seeking to make election day real would give way to a Babel of decrees. And what's to stop courts from tinkering with in-person voting rules too? This judge declined to go that far, but the plaintiffs thought he should have, and it's not hard to imagine other judges accepting invitations to unfurl the precinct maps and decide whether States should add polling places, revise their hours, rearrange the voting booths within them, or maybe even supplement existing social distancing, hand washing, and ventilation protocols.

The Constitution dictates a different approach to these how-much-is-enough questions. The Constitution provides that state legislatures—not federal judges, not state judges, not state governors, not other state offcia ls—bear primary responsibility for setting election rules. Art. I, § 4, cl. 1. And the Constitution provides a second layer of protection too. If state rules need revision, Congress is free to alter them. *Ibid.* ("The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations . . . "). Nothing in our founding document contemplates the kind of judicial intervention that took place here, nor is there precedent for it in 230 years of this Court's decisions.

Understandably so. Legislators can be held accountable by the people for the rules they write or fail to write; typically, judges cannot. Legislatures make policy and bring to bear the collective wisdom of the whole people when they do, while courts dispense the judgment of only a single person or a handful. Legislatures enjoy far greater resources for research and factf nding on questions of science and safety than usually can be mustered in litigation between discrete parties before a single judge. In reaching their decisions, legislators must compromise to achieve the broad social consensus necessary to enact new laws, something not eas-

ily replicated in courtrooms where typically one side must win and the other lose.

Of course, democratic processes can prove frustrating. Because they cannot easily act without a broad social consensus, legislatures are often slow to respond and tepid when they do. The clamor for judges to sweep in and address emergent problems, and the temptation for individual judges to f ll the void of perceived inaction, can be great. But what sometimes seems like a fault in the constitutional design was a feature to the framers, a means of ensuring that any changes to the status quo will not be made hastily, without careful deliberation, extensive consultation, and social consensus.

Nor may we undo this arrangement just because we might be frustrated. Our oath to uphold the Constitution is tested by hard times, not easy ones. And succumbing to the temptation to sidestep the usual constitutional rules is never costless. It does damage to faith in the written Constitution as law, to the power of the people to oversee their own government, and to the authority of legislatures, for the more we assume their duties the less incentive they have to discharge them. Last-minute changes to longstanding election rules risk other problems too, inviting confusion and chaos and eroding public confdence in electoral outcomes. No one doubts that conducting a national election amid a pandemic poses serious challenges. But none of that means individual judges may improvise with their own election rules in place of those the people's representatives have adopted.

JUSTICE KAVANAUGH, concurring.

Approximately 30 States, including Wisconsin, require that absentee ballots be received by election day in order to be counted. Like most States, Wisconsin has retained that deadline for the November 2020 election, notwithstanding the COVID–19 pandemic. In advance of the November election, however, a Federal District Court in Wisconsin unilaterally changed the State's deadline for receipt of absentee ballots. Citing the pandemic, the court extended the deadline for receipt of absentee ballots by six days—from election day, November 3, to November 9, so long as the ballots are postmarked on or before election day, November 3.

The Seventh Circuit stayed the District Court's injunction, ruling that the District Court had violated this Court's precedents

in two fundamental ways: frst, by changing state election rules too close to an election; and second, by usurping the state legislature's authority to either keep or make changes to state election rules in light of the pandemic.

Applicants here ask that we vacate the Seventh Circuit's stay and reinstate the District Court's order extending the deadline for absentee ballots to be received in Wisconsin. The Court today denies the applications and maintains the Seventh Circuit's stay of the District Court's order. I agree with the Court's decision to deny the applications, and I write separately to explain why.

I

For three alternative and independent reasons, I conclude that the District Court's injunction was unwarranted.

First, the District Court changed Wisconsin's election rules too close to the election, in contravention of this Court's precedents. This Court has repeatedly emphasized that federal courts ordinarily should not alter state election laws in the period close to an election—a principle often referred to as the *Purcell* principle. See *Purcell* v. *Gonzalez*, 549 U. S. 1 (2006) (*per curiam*); see also *Merrill* v. *People First of Ala.*, 592 U. S. 1035 (2020) (*Merrill II*); *Andino* v. *Middleton*, 592 U. S. 906 (2020); *Merrill* v. *People First of Ala.*, 591 U. S. 1024 (2020) (*Merrill I*); *Clarno* v. *People Not Politicians*, 591 U. S. 1073 (2020); *Little* v. *Reclaim Idaho*, 591 U. S. 1060 (2020); *Republican National Committee* v. *Democratic National Committee*, 589 U. S. 423 (2020) (*per curiam*) (*RNC*).

The Court's precedents recognize a basic tenet of election law: When an election is close at hand, the rules of the road should be clear and settled. That is because running a statewide election is a complicated endeavor. Lawmakers initially must make a host of diffcu lt decisions about how best to structure and conduct the election. Then, thousands of state and local offcia ls and volunteers must participate in a massive coordinated effort to implement the lawmakers' policy choices on the ground before and during the election, and again in counting the votes afterwards. And at every step, state and local offcia ls must communicate to voters how, when, and where they may cast their ballots through in-person voting on election day, absentee voting, or early voting.

Even seemingly innocuous late-in-the-day judicial alterations to state election laws can interfere with administration of an election and cause unanticipated consequences. If a court alters election

laws near an election, election administrators must first understand the court's injunction, then devise plans to implement that late-breaking injunction, and then determine as necessary how best to inform voters, as well as state and local election officials and volunteers, about those last-minute changes. It is one thing for state legislatures to alter their own election rules in the late innings and to bear the responsibility for any unintended consequences. It is quite another thing for a federal district court to swoop in and alter carefully considered and democratically enacted state election rules when an election is imminent.

That important principle of judicial restraint not only prevents voter confusion but also prevents election administrator confusion—and thereby protects the State's interest in running an orderly, efficient election and in giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election. See *Purcell*, 549 U. S., at 4–5; *Crawford* v. *Marion County Election Bd.*, 553 U. S. 181, 197 (2008) (plurality opinion). The principle also discourages last-minute litigation and instead encourages litigants to bring any substantial challenges to election rules ahead of time, in the ordinary litigation process. For those reasons, among others, this Court has regularly cautioned that a federal court's last-minute interference with state election laws is ordinarily inappropriate.

In this case, however, just six weeks before the November election and after absentee voting had already begun, the District Court ordered several changes to Wisconsin's election laws, including a change to Wisconsin's deadline for receipt of absentee ballots. Although the District Court's order was well intentioned and thorough, it nonetheless contravened this Court's longstanding precedents by usurping the proper role of the state legislature and rewriting state election laws in the period close to an election.

Applicants retort that the *Purcell* principle precludes an appellate court—such as the Seventh Circuit here—from overturning a district court's injunction of a state election rule in the period close to an election. That argument defies common sense and would turn *Purcell* on its head. Correcting an erroneous lower court injunction of a state election rule cannot itself constitute a *Purcell* problem. Otherwise, appellate courts could never correct a late-breaking lower court injunction of a state election rule. That obviously is not the law. To be sure, it would be preferable if federal district courts did not contravene the *Purcell* principle

by rewriting state election laws close to an election. But when they do, appellate courts must step in. See, *e. g.*, *Andino*, 592 U. S. 906; *RNC*, 589 U. S., at 425.

Second, even apart from the late timing, the District Court misapprehended the limited role of the federal courts in COVID–19 cases. This Court has consistently stated that the Constitution principally entrusts politically accountable state legislatures, not unelected federal judges, with the responsibility to address the health and safety of the people during the COVID–19 pandemic.

The COVID–19 pandemic has caused the deaths of more than 200,000 Americans, and it remains a serious threat, including in Wisconsin. The virus poses a particular risk to the elderly and to those with certain pre-existing conditions. But federal judges do not possess special expertise or competence about how best to balance the costs and benefts of potential policy responses to the pandemic, including with respect to elections. For that reason, this Court's cases during the pandemic have adhered to a basic jurisprudential principle: When state and local offcia ls "`undertake[ ] to act in areas fraught with medical and scientifc uncertainties,' their latitude `must be especially broad.' " *Andino*, 592 U. S., at 907 (KAVANAUGH, J., concurring in grant of application for stay). It follows "that a State legislature's decision either to keep or to make changes to election rules to address COVID–19 ordinarily `should not be subject to second-guessing by an unelected federal judiciary, which lacks the background, competence, and expertise to assess public health and is not accountable to the people.' " *Ibid.* (some internal quotation marks omitted). As the Seventh Circuit rightly explained, "the design of electoral procedures is a legislative task," including during the pandemic. *Democratic National Committee* v. *Bostelmann*, 977 F. 3d 639, 642 (2020).

Over the last seven months, this Court has stayed numerous federal district court injunctions that second-guessed state legislative judgments about whether to keep or make changes to election rules during the pandemic. See *Merrill II*, 592 U. S. 1035; *Andino*, 592 U. S. 906; *Merrill I*, 591 U. S. 1024; *Clarno*, 591 U. S. 1073; *Little*, 591 U. S. 1060; *RNC*, 589 U. S. 423.

To be sure, in light of the pandemic, some state legislatures have exercised their Article I, § 4, authority over elections and have changed their election rules for the November 2020 election.

Of particular relevance here, a few States such as Mississippi no longer require that absentee ballots be received before election day. See, *e. g.*, Miss. Code Ann. § 23–15–637 (2020). Other States such as Vermont, by contrast, have decided not to make changes to their ordinary election-deadline rules, including to the election-day deadline for receipt of absentee ballots. See, *e. g.*, Vt. Stat. Ann., Tit. 17, § 2543 (2020). The variation in state responses reflects our constitutional system of federalism. Different state legislatures may make different choices. Assessing the complicated tradeoffs involved in changing or retaining election deadlines, or other election rules, in light of public health conditions in a particular State is primarily the responsibility of state legislatures and falls outside the competence of federal courts.

Applicants respond that this principle of deference to state legislatures applies only when a state legislature has affirmatively made some changes, but not others, to the election code in light of COVID–19. And they say that Wisconsin's legislature has not done so, unlike the South Carolina legislature in *Andino*, for example. But the Wisconsin State Legislature's decision *not* to modify its election rules in light of the pandemic is itself a policy judgment worthy of the same judicial deference that this Court afforded the South Carolina legislature in *Andino*, 592 U. S. 906. In short, state legislatures, not federal courts, primarily decide whether and how to adjust election rules in light of the pandemic.

Third, the District Court did not sufficiently appreciate the significance of election deadlines. This Court has long recognized that a State's reasonable deadlines for registering to vote, requesting absentee ballots, submitting absentee ballots, and voting in person generally raise no federal constitutional issues under the traditional *Anderson-Burdick* balancing test. See *Anderson* v. *Celebrezze*, 460 U. S. 780 (1983); *Burdick* v. *Takushi*, 504 U. S. 428 (1992).

To state the obvious, a State cannot conduct an election without deadlines. It follows that the right to vote is not substantially burdened by a requirement that voters "act in a timely fashion if they wish to express their views in the voting booth." *Burdick*, 504 U. S., at 438. For the same reason, the right to vote is not substantially burdened by a requirement that voters act in a timely fashion if they wish to cast an *absentee ballot*. Either way, voters need to vote on time. A deadline is not unconstitutional merely because of voters' "own failure to take timely steps"

to ensure their franchise. *Rosario* v. *Rockefeller*, 410 U. S. 752, 758 (1973). Voters who, for example, show up to vote at midnight after the polls close on election night do not have a right to demand that the State nonetheless count their votes. Voters who submit their absentee ballots after the State's deadline similarly do not have a right to demand that the State count their votes.

For important reasons, most States, including Wisconsin, require absentee ballots to be *received* by election day, not just *mailed* by election day. Those States want to avoid the chaos and suspicions of impropriety that can ensue if thousands of absentee ballots fow in after election day and potentially f ip the results of an election. And those States also want to be able to def nitively announce the results of the election on election night, or as soon as possible thereafter. Moreover, particularly in a Presidential election, counting all the votes quickly can help the State promptly resolve any disputes, address any need for recounts, and begin the process of canvassing and certifying the election results in an expeditious manner. See 3 U. S. C. § 5. The States are aware of the risks described by Professor Pildes: "[L]ate-arriving ballots open up one of the greatest risks of what might, in our era of hyperpolarized political parties and existential politics, destabilize the election result. If the apparent winner the morning after the election ends up losing due to late-arriving ballots, charges of a rigged election could explode." Pildes, How to Accommodate a Massive Surge in Absentee Voting, U. Chi. L. Rev. Online (June 26, 2020) (online source archived at www.supremecourt.gov). The "longer after Election Day any signif - cant changes in vote totals take place, the greater the risk that the losing side will cry that the election has been stolen." *Ibid.*

One may disagree with a State's policy choice to require that absentee ballots be received by election day. Indeed, some States require only that absentee ballots be *mailed* by election day. See, *e. g.*, W. Va. Code Ann. § 3–3–5(g)(2) (Lexis 2020). But the States requiring that absentee ballots be received by election day do so for weighty reasons that warrant judicial respect. Federal courts have no business disregarding those state interests simply because the federal courts believe that later deadlines would be better.

That constitutional analysis of election deadlines still applies in the pandemic. After all, during the pandemic, a State still cannot conduct an election without deadlines. And the States that re-

quire absentee ballots to be received by election day still have strong interests in avoiding suspicions of impropriety and announcing f nal results on or close to election night.

To be sure, more people are voting absentee during the pandemic. But the State of Wisconsin has repeatedly instructed voters to request and mail their ballots well ahead of time, and the State has taken numerous steps to accommodate the increased number of absentee ballots. Moreover, the State now has some experience to draw upon when administering an election during the pandemic. Wisconsin conducted primary elections in April and August, and has incorporated the lessons from those experiences into its extensive planning for the November election. See Wisconsin Elections Commission, April 7, 2020 Absentee Voting Report 24 (May 15, 2020) (online source archived at www.supremecourt.gov). And that planning has paid off so far: For the November election, more than a million Wisconsin voters have *already* voted by absentee ballot.

In attempting to justify the District Court's injunction, Applicants also rely on this Court's decision in April regarding the Wisconsin primary election. They claim that the Court there approved the District Court's change of the deadline for receipt of absentee ballots in the primary election, so long as the ballots were postmarked by election day. *RNC*, 589 U. S. 423. That assertion is incorrect. In that case, this Court explicitly stated that the District Court's last-minute extension of the deadline for receipt of absentee ballots was "not challenged in this Court." *Id.*, at 423.

In sum, the District Court's injunction was unwarranted for three alternative and independent reasons: The District Court changed the state election laws too close to the election. It misapprehended the limited role of federal courts in COVID–19 cases. And it did not suffciently appreciate the signifcance of election deadlines.[1]

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[1] A *federal court's* alteration of state election laws such as Wisconsin's differs in some respects from a *state court's* (or state agency's) alteration of state election laws. That said, under the U. S. Constitution, the state courts do not have a blank check to rewrite state election laws for federal elections. Article II expressly provides that the rules for Presidential elections are established by the States "in such Manner as the *Legislature* thereof may direct." § 1, cl. 2 (emphasis added). The text of Article II means that "the clearly expressed intent of the legislature must prevail" and that a state

II

The dissent rejects all three of the above conclusions and applies the ordinary *Anderson-Burdick* balancing test for analyzing state election rules. In the dissent's view, the District Court permissibly concluded that the benefts of the State's deadline for receipt of absentee ballots are outweighed by the burdens of the deadline on voters. In light of the three alternative and independent conclusions outlined above, I do not think that we may conduct that kind of open-ended balancing test in this case. But even on its own terms, the dissent's balancing analysis is faulty, in my respectful view.

Start by considering the implications of the dissent's analysis. In reinstating the District Court's order extending Wisconsin's deadline for receipt of absentee ballots, the dissent's approach would necessarily invalidate (or at least call into question) the laws of approximately 30 States for the upcoming election and compel all of those States to accept absentee ballots received after election day. The dissent's *de facto* green light to federal courts to rewrite dozens of state election laws around the country over the next two weeks seems to be rooted in a belief that federal judges know better than state legislators about how to

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court may not depart from the state election code enacted by the legislature. *Bush* v. *Gore*, 531 U. S. 98, 120 (2000) (Rehnquist, C. J., concurring); see *Bush* v. *Palm Beach County Canvassing Bd.*, 531 U. S. 70, 76–78 (2000) (*per curiam*); *McPherson* v. *Blacker*, 146 U. S. 1, 25 (1892). In a Presidential election, in other words, a state court's "signifcant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question." *Bush* v. *Gore*, 531 U. S., at 113 (Rehnquist, C. J., concurring). As Chief Justice Rehnquist explained in *Bush* v. *Gore*, the important federal judicial role in reviewing state-court decisions about state law in a federal Presidential election "does not imply a disrespect for state *courts* but rather a respect for the constitutionally prescribed role of state *legislatures*. To attach def nitive weight to the pronouncement of a state court, when the very question at issue is whether the court has actually departed from the statutory meaning, would be to abdicate our responsibility to enforce the explicit requirements of Article II." *Id.*, at 115.

The dissent here questions why the federal courts would have a role in that kind of case. *Post*, at 1064, n. 6 (opinion of KAGAN, J.). The answer to that question, as the unanimous Court stated in *Bush* v. *Palm Beach County Canvassing Bd.*, and as Chief Justice Rehnquist persuasively explained in *Bush* v. *Gore*, is that the text of the Constitution requires federal courts to ensure that state courts do not rewrite state election laws.

run elections during a pandemic. But over the last several months, this Court has consistently rejected that federal-judges-know-best vision of election administration.

The dissent does not fully come to grips with the destabilizing consequences of its analysis, saying that the facts may differ in other States. But the key facts underlying the District Court's injunction are similar in other States: the existence of the virus and its effects on election workers, voters, mail systems, and in-person voting. The dissent's claim that its reasoning would not necessarily invalidate the absentee-ballot deadlines of approximately 30 other States therefore rings hollow.

Turning to the dissent's balancing analysis, the dissent does not suffciently appreciate the necessity of deadlines in elections, and does not suffciently account for all the steps that Wisconsin has already taken to help voters meet those deadlines.

The dissent claims that the State's election-day deadline for receipt of absentee ballots will "disenfranchise" some Wisconsin voters. But that is not what a reasonable election deadline does. This Court has long explained that a State's election deadline does not disenfranchise voters who are capable of meeting the deadline but fail to do so. See *Rosario*, 410 U. S., at 757–758. In other words, reasonable election deadlines do not "disenfranchise" anyone under any legitimate understanding of that term. And the dissent cannot plausibly argue that the absentee-ballot deadline imposed—and still in place as of today—in most of the States is not a reasonable one. Those voters who disregard the deadlines or who fail to take the state-prescribed steps for meeting the deadlines may have to vote in person. But no one is disenfranchised by Wisconsin's reasonable and commonplace deadline for receiving absentee ballots. Indeed, more than *one million* Wisconsin voters have already requested, received, *and returned* their absentee ballots.

To help voters meet the deadlines, Wisconsin makes it easy to vote absentee and has taken several extraordinary steps this year to inform voters that they should request and return absentee ballots well before election day.

For starters, as the Seventh Circuit aptly noted, Wisconsin has "lots of rules" that "make voting easier than do the rules of many other states." *Luft* v. *Evers*, 963 F. 3d 665, 672 (2020). Wisconsin law allows voters to vote absentee without an excuse, no questions asked. Wis. Stat. § 6.85 (2017–2018). Registered vot-

ers may request an absentee ballot by mail, e-mail, online, or fax. Wisconsin Elections Commission, Absentee Voting, https://elections.wi.gov/voters/absentee.

Since August, moreover, the Wisconsin Elections Commission has been regularly reminding voters of the need to act early so as to avoid backlogs and potential mail delays. See, *e. g.*, Wisconsin Elections Commission, Wisconsin Voting Deadlines and Facts for November 2020 (Aug. 20, 2020), http://elections.wi.gov/node/7039. In August and September, for example, Wisconsin's chief elections offcia l explicitly urged voters not to wait to request a ballot: "It takes time for Wisconsin clerks to process your request. Then it may take up to seven days for you to receive your ballot in the mail. It can then take another seven days for your ballot to be returned by mail." Wisconsin Elections Commission, Wisconsin Mails Voting Information to Registered Voters (Sept. 3, 2020), http://elections.wi.gov/node/7077.

Perhaps most importantly, in early September, Wisconsin decided to leave little to chance and mailed every registered voter in the State who had not already requested an absentee ballot (2.6 million of Wisconsin's registered voters) an absentee ballot application, as well as information about how to vote absentee. *Ibid.*

Returning an absentee ballot in Wisconsin is also easy. To begin with, voters can return their completed absentee ballots by mail. But absentee voters who do not want to rely on the mail have several other options. Until election day, voters may, for example, hand-deliver their absentee ballots to the municipal clerk's offce or other designated site, or they may place their absentee ballots in a secure absentee ballot drop box. Some absentee ballot drop boxes are located outdoors, either for drive-through or walk-up access, and some are indoors at a location like a municipal clerk's offce . Memorandum from M. Wolfe, Administrator of the Wisconsin Elections Commission, et al. to All Wisconsin Election Offcia ls (Aug. 19, 2020) (online source archived at www.supremecourt.gov). The Wisconsin Elections Commission has made federal grant money available to local municipalities to purchase additional absentee ballot drop boxes to accommodate expanded absentee voting.

Alternatively, absentee voters may vote "in-person absentee" beginning two weeks before election day. Wis. Stat. § 6.86(1)(b). A Wisconsin voter who votes "in-person absentee" f lls out an

absentee ballot in person at a municipal clerk's offce or other designated location before election day. Some municipalities have created drive-up absentee voting sites to allow voters to vote "in-person absentee" without leaving their cars. See, *e. g.*, City of Madison Clerk's Offce , In-Person Absentee Voting Hours and Locations (online source archived at www.supremecourt.gov).

Finally, on election day, a voter may drop off an absentee ballot at a polling place until 8:00 p.m. Memorandum from M. Wolfe, Administrator of the Wisconsin Elections Commission, to Wisconsin Municipal Clerks (Mar. 31, 2020) (online source archived at www.supremecourt.gov).

In sum, as the Governor of Wisconsin correctly said back in March as the COVID–19 crisis broke: "The good news is that absentee voting in Wisconsin is really easy." Marley, The Deadline to Request an Absentee Ballot in Wisconsin Is Friday. Here's How You Do It., Milwaukee Journal Sentinel, Mar. 13, 2020 (online source archived at www.supremecourt.gov).

The current statistics for the November election bear out the Governor's statement that absentee voting in Wisconsin is "really easy." In huge and unprecedented numbers, Wisconsin voters have already taken advantage of the State's generous absentee voting procedures for the November election. As of October 26, 2020, the Wisconsin Elections Commission has mailed 1,706,771 absentee ballots to Wisconsin voters. And it has already received back from voters 1,344,535 completed absentee ballots. Wisconsin Elections Commission, Absentee Ballot Report—November 3, 2020 General Election (Oct. 26, 2020), https://elections.wi.gov/node/7207.

As those statistics suggest, the dissent's charge that Wisconsin has disenfranchised absentee voters is not tenable. As the Seventh Circuit explained, the "district court did not f nd that any person who wants to avoid voting in person on Election Day would be unable to cast a ballot in Wisconsin by planning ahead and taking advantage of the opportunities allowed by state law." 977 F. 3d, at 642.

The dissent insists, however, that "tens of thousands" and perhaps even 100,000 votes will not be counted if we do not reinstate the District Court's extension of the deadline. *Post*, at 1058 (opinion of KAGAN, J.). The District Court arrived at the same prediction, but it was a prediction, not a f nding of fact. Indeed, the District Court did not include this prediction in the facts section of its

opinion. *Democratic National Committee* v. *Bostelmann*, 488 F. Supp. 3d 776, 808 (WD Wis., Sept. 21, 2020). For its part, the dissent makes the same prediction by looking at the number of absentee ballots that arrived after the primary election day in April. But in the April primary, the received-by deadline had been extended to allow receipt of absentee ballots after election day. The dissent's statistic tells us nothing about how many voters might miss the deadline when voters know that the ballots must be received by election day. To take an analogy: How many people would file their taxes after April 15 if the filing deadline were changed to April 21? Lots. That fact tells us nothing about how many people would file their taxes after April 15 if the deadline remained at April 15.

The dissent also seizes on the fact that Wisconsin law allows voters to request absentee ballots until October 29, five days before election day. But the dissent does not grapple with the good reason why the State allows such late requests. The State allows those late requests for ballots because it wants to accommodate late requesters who still want to obtain an absentee ballot so that they can drop it off in person and avoid lines at the polls on election day. No one thinks that voters who request absentee ballots as late as October 29 can both receive the ballots and *mail* them back in time to be received by election day. As we stated in April, "even in an ordinary election, voters who request an absentee ballot at the deadline for requesting ballots . . . will usually receive their ballots on the day before or day of the election." *RNC*, 589 U. S., at 425. Rather, those late requesters would, after receiving the ballots, necessarily have to drop their absentee ballots off in person at one of the designated locations. In short, Wisconsin provides an option to request absentee ballots until October 29 for voters who decide relatively late in the game that they would prefer to avoid lines at the polls on election day.

The dissent's October 29-based argument falls short for another reason as well: The dissent's approach would actually penalize Wisconsin for being too generous with its absentee voting regime. Under the dissent's theory, if Wisconsin had just set a *more restrictive* deadline for voters to request absentee ballots—say, two weeks before election day—there presumably would not be a constitutional problem with the State's election-day deadline for receipt of absentee ballots. But it makes little sense to penalize

Wisconsin for accommodating voters and making it easier for them to vote absentee and avoid lines on election day.

The dissent's rhetoric of "disenfranchisement" is misplaced for still another reason. As the dissent uses that term, the dissent's own position would itself "disenfranchise" voters. What about voters who request an absentee ballot after October 29? What about voters who mail their ballots after November 3? What about voters who mail their ballots by November 3 but whose ballots arrive after November 9? Even if we reinstated the District Court's order as the dissent would have us do, those votes would not count. The dissent's position would itself therefore "disenfranchise" some voters, at least as the dissent uses the term. All of which simply shows that the dissent's rhetoric of disenfranchisement is mistaken.

The dissent responds that I am just disagreeing with the facts found by the District Court. Not so. I do not disagree with any of the relevant historical facts that the District Court found and that the dissent highlights. The dissent, for example, calls attention to the District Court's f nding that nearly two million Wisconsin voters in this election are likely to request mail ballots. I agree. Indeed, the Wisconsin Elections Commission has already sent nearly that number of absentee ballots to voters who have requested them. The dissent notes that the infux of ballots has imposed a serious burden on some local election offces. I agree. The dissent points out that the District Court found that ballots can sometimes take two weeks to be sent and returned in light of Postal Service delays. I agree. The dissent highlights that the pandemic has gotten worse, not better, in Wisconsin over the last few weeks. I agree. And the dissent notes that the in-person voting option can pose a health risk to elderly and ill voters. I agree; I am fully aware of and sensitive to that reality.

Contrary to the dissent's attempt to characterize our disagreement as factual, the facts in this case are largely undisputed. I have zero disagreement with the dissent on the question of whether COVID–19 is a serious problem. It is. Instead, I disagree with some of the District Court's and the dissent's speculative predictions about how the voting process might unfold with an election-day deadline for receipt of absentee ballots. And I disagree with the District Court's and the dissent's legal analysis of whether, given the agreed-upon facts, the State has done enough to protect the right to vote under the Constitution and

this Court's precedents, given the necessity of having election deadlines.

In short, I agree with the dissent that COVID–19 is a serious problem. But you need deadlines to hold elections—there is just no wishing away or getting around that fundamental point. And Wisconsin's deadline is the same as that in 30 other States and is a reasonable deadline given all the circumstances.

To be clear, in every election a voter who requests an absentee ballot, particularly a voter who waits until the last moments to request an absentee ballot, might not receive a ballot in time to mail it back in, or in some cases may not receive a ballot until after election day. Or in some cases, a voter may mail a completed ballot, but it may get delayed and arrive too late to be counted.[2] Indeed, in 2012 and 2016, the States rejected more than 70,000 ballots in each election because the ballots missed the deadlines. U. S. Election Assistance Commission, 2012 Election Administration and Voting Survey 42 (2013); U. S. Election Assistance Commission, 2016 Election Administration and Voting Survey 11, 25 (2017). But moving a deadline would not prevent ballots from arriving after the newly minted deadline any more than moving frst base would mean no more close plays. And more to the point, the fact that some ballots will be late in any system with deadlines does not make Wisconsin's widely used deadline facially unconstitutional. See *Crawford*, 553 U. S., at 202–203.

Put another way, the relevant question is not whether any voter would ever miss the deadlines. After all, in every deadline case, the answer would always be yes, and no election deadline would ever be permissible. The proper question under the Constitution is whether the deadline is reasonable under the circumstances. See *Rosario*, 410 U. S., at 760. Again, Wisconsin's deadline is the same as that in about 30 other States for the November election and is reasonable, for the reasons I have explained.

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[2] In Wisconsin, a voter can track his or her ballot online. MyVote Wisconsin, Track My Ballot, https://myvote.wi.gov/en-us/TrackMyBallot. If a voter is concerned that the ballot may not be received in time, the voter can cancel the absentee ballot and request a new one or vote in person, as long as the voter meets the deadlines set by the municipality for doing so, which typically fall a few days before election day. Memorandum from M. Wolfe, Administrator of the Wisconsin Elections Commission, to Wisconsin County Clerks et al. (Oct. 19, 2020) (online source archived at www.supremecourt.gov).

In any event, if a Wisconsin voter does not receive an absentee ballot in time to cast it, the voter still has the option of voting in person. And Wisconsin, like many other States, demonstrated in the April and August primary elections that it can run an in-person election in a way that is reasonably safe for Wisconsin voters, with socially distanced lines, mask requirements, and sanitizing protocols. The District Court acknowledged that in-person voting can be done "safely" again in November "if the majority of votes are cast in advance, suffcient poll workers, polling places, and PPE are available, and social distancing and masking protocols are followed." 488 F. Supp. 3d, at 792. If a voter requests a ballot at the last minute—long after the State has told voters that they should request ballots—and if that voter does not receive a ballot by election day, the voter still has the option of voting in person. That said, the better option, as Wisconsin has repeatedly announced, is for voters who wish to vote absentee to request and submit their ballots well ahead of time. That is what tens of millions of voters across America—including more than one million voters in Wisconsin—have already done.

* * *

For those reasons, I concur in the denial of the applications to vacate the stay.

JUSTICE KAGAN, with whom JUSTICE BREYER and JUSTICE SOTOMAYOR join, dissenting.

In April, residents of Wisconsin voted in presidential primaries. That election was one of the frst during the COVID–19 pandemic, which has turned in-person voting (with its often-long lines, touch screens, and enclosed booths) into a health risk, especially for older and less healthy Americans. Given these emergency conditions, a district judge directed the State to accept mail ballots received in the six days after the polls closed. That extension of Wisconsin's ballot-receipt deadline ensured that COVID-related delays in the delivery and processing of mail ballots would not disenfranchise citizens fearful of voting in person. Because of the court's ruling, state offcia ls counted 80,000 ballots—about fve percent of the total cast—that were postmarked by Election Day but would have been discarded for arriving a few days later.

Today, millions of Wisconsin citizens are preparing to vote in the November election. But COVID is not over. In Wisconsin,

the pandemic is much worse—more than 20 times worse, by one measure—than it was in the spring: The State's health department now reports a weekly average of 3,879 cases per day, compared to 175 per day when the April election took place. See Wisconsin Department of Health Services, COVID–19: Wisconsin Cases (Oct. 26, 2020), www.dhs.wisconsin.gov/covid-19/cases.htm. Indeed, Wisconsin is one of the hottest of all COVID hotspots in the Nation. So rather than vote in person, many Wisconsinites will again choose to vote by mail. State election offcia ls report that 1.7 million people—about 50 percent of Wisconsin's voters—have already asked for mail ballots. And more are expected to do so, because state law gives voters until October 29, fve days before Election Day, to make that request.

To ensure that these mail ballots are counted, the district court ordered in September the same relief afforded in April: a six-day extension of the receipt deadline for mail ballots postmarked by Election Day. The court supported that order with specifc facts and fg ures about how COVID would affect the electoral process in Wisconsin. See *Democratic National Committee* v. *Bostelmann*, 488 F. Supp. 3d 776, 789–790, 792–795, 807–808 (WD Wis. 2020). The court found that the surge in requests for mail ballots would overwhelm state offcia ls in the weeks leading up to the October 29 ballot-application deadline. And it discovered unusual delays in the United States Postal Service's delivery of mail in the State. The combination of those factors meant, as a high-ranking elections offcia l testifed, that a typical ballot would take a full two weeks "to make its way through the mail from a clerk's offce to a voter and back again"—even when the voter instantly turns the ballot around. *Id.*, at 788, n. 10. Based on the April election experience, the court determined that many voters would not even *receive* mail ballots by Election Day, making it impossible to vote in that way. And as many as 100,000 citizens would not have their votes counted—even though timely requested and postmarked—without the six-day extension. (To put that number in perspective, a grand total of 284 Wisconsin mail ballots were not counted in the 2016 election.[1]) In the court's view, the discarding of so many properly cast ballots would

[1] See U. S. Election Assistance Commission, 2016 Election Administration and Voting Survey 25.

severely burden the constitutional right to vote. The ft remedy was to create a six-day grace period, to allow those ballots a little extra time to arrive in the face of unprecedented administrative and delivery delays.

But a court of appeals halted the district court's order, and today this Court leaves that stay in place. I respectfully dissent because the Court's decision will disenfranchise large numbers of responsible voters in the midst of hazardous pandemic conditions.

I

Start with this fact: The court of appeals did not dispute any of the district court's careful f ndings about the effect of COVID on voting in Wisconsin. The appellate court did not question the health risks—now increasing daily—of in-person voting in the State, especially to senior citizens and those with some pre-existing conditions.[2] It did not deny that, because of those dangers, state election offces will be swamped until the end of October by timely mail-ballot applications. It did not contest that backlogs in those offces, combined with unusual delays in mail delivery, will prevent tens of thousands of Wisconsinites—through no fault of their own—from successfully casting a mail ballot. Nor did the appellate court express doubt that disenfranchisement of that kind, and on that scale, imposes a severe burden on the right to vote. See generally *Burdick* v. *Takushi*, 504 U. S. 428, 434 (1992). In fact, the court never even addressed the constitutional issue.

How could that be? In the appellate court's view, this Court's decision in *Purcell* v. *Gonzalez*, 549 U. S. 1 (2006) (*per curiam*), prohibited the district court from modifying Wisconsin's election rules so close to (*i. e.*, six weeks before) Election Day. See *Democratic National Committee* v. *Bostelmann*, 977 F. 3d 639, 641–643 (CA7 2020) (*per curiam*); see also *ante*, at 1043–1045 (KAVANAUGH, J., concurring). But that is a misunderstanding of *Purcell*'s message. In fxati ng on timing alone, the court of appeals went astray.

[2] See C. Cotti, B. Engelhardt, J. Foster, E. Nesson, & P. Niakamp, The Relationship Between In-Person Voting and COVID–19: Evidence From the Wisconsin Primary, NBER Working Paper No. 27187, p. 11 (rev. Oct. 2020) ("Across all models, we f nd an increase in the positive share of COVID–19 cases in the weeks following the election in counties that had more in-person votes per voting location, all else equal").

The Court in *Purcell* considered an appellate decision reversing a district court's refusal to enjoin a voter identifcati on law shortly before an election. We vacated the decision because the court of appeals—much like the one here—failed to "give deference to [a district court's] discretion" in assessing the propriety of injunctive relief. 549 U. S., at 5. In doing so, we briefy addressed how to "weigh" whether an injunction of an election rule should issue. *Id.*, at 4. A court, we counseled, must balance the "harms attendant upon issuance or nonissuance of an injunction," together with "considerations specifc to election cases" that may affect "the integrity of our electoral processes." *Ibid.* Among those election-specifc factors, we continued, was the potential for a court order, especially close to Election Day, to "result in voter confusion and consequent incentive to remain away from the polls." *Id.*, at 4–5.

That statement, as the dissent below saw, "articulated not a rule but a caution." 977 F. 3d, at 644 (opinion of Rovner, J.). Last-minute changes to election processes may baffe and discourage voters; and when that is likely, a court has strong reason to stay its hand. But not every such change poses that danger. And a court must also take account of other matters—among them, the presence of extraordinary circumstances (like a pandemic), the clarity of a constitutional injury, and the extent of voter disenfranchisement threatened. At its core, *Purcell* tells courts to apply, not depart from, the usual rules of equity. See, *e. g.*, *Winter* v. *Natural Resources Defense Council, Inc.*, 555 U. S. 7, 24 (2008) ("In each case, courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief" (internal quotation marks omitted)). And that means courts must consider all relevant factors, not just the calendar. Yes, there is a danger that an autumn injunction may confuse voters and suppress voting. But no, there is not a moratorium on the Constitution as the cold weather approaches. Remediable incursions on the right to vote can occur in September or October as well as in April or May.

And so the district court rightly held here. It is hard to see how the extension of a ballot-receipt deadline could confuse citizens about how to vote: At worst, a voter not informed of the new deadline would (if she could) put her ballot in the mail a few days earlier than needed. Nor would that measure discourage

Wisconsin citizens from exercising their right to the franchise. To the contrary, it would prevent the State from throwing away the votes of people actively participating in the democratic process. And what will undermine the "integrity" of that process is not the counting but instead the discarding of timely cast ballots that, because of pandemic conditions, arrive a bit after Election Day. *Purcell*, 549 U. S., at 4.[3] On the scales of both constitutional justice and electoral accuracy, protecting the right to vote in a health crisis outweighs conforming to a deadline created in safer days.

Indeed, I see no more apt time for the district court to have issued its injunction than when it did. The court of appeals insisted that the injunction would better have come in May, a half-year before Election Day; then, the court said, the order "could not be called untimely." 977 F. 3d, at 642. But "untimely" can mean too early as well as too late. And a May order could have been premature, perhaps even foolishly so. At that time, the district court could not have known the course COVID would take. Cf. *FDA* v. *American College of Obstetricians and Gynecologists*, 592 U. S. 990 (2020) (instructing a district court to consider whether pandemic conditions have changed enough to warrant modifying an injunction). Nor could the court have known about the current ability of Wisconsin election offces or the Postal Service to handle increased demand for mail ballots. (Doubts about the Postal Service's delivery performance, for example, did not arise until August.) In waiting until late September, the district court resolved to base its ruling on concrete evidence—not on unfounded speculation.

And without *Purcell*, not much is left in the appellate court's opinion to justify its stay. That court separately argued that "the design of electoral procedures" is a solely "legislative task." 977 F. 3d, at 642; see also *ante*, at 1045–1046 (KAVANAUGH, J., concurring). But that is not so when those procedures infringe the constitutionally enshrined right to vote. See, *e. g.*, *Anderson* v. *Celebrezze*, 460 U. S. 780, 786 (1983) (invali-

[3] JUSTICE KAVANAUGH alleges that "suspicions of impropriety" will result if "absentee ballots fow in after election day and potentially f ip the results of an election." *Ante*, at 1047. But there are no results to "f ip" until all valid votes are counted. And nothing could be more "suspicio[us]" or "improp[er]" than refusing to tally votes once the clock strikes 12 on election night. To suggest otherwise, especially in these fractious times, is to disserve the electoral process.

dating a state filing deadline); *Harper* v. *Virginia Bd. of Elections*, 383 U. S. 663, 666 (1966) (invalidating a state poll tax); *Reynolds* v. *Sims*, 377 U. S. 533, 568 (1964) (invalidating state districting maps). To be sure, deference is usually due to a legislature's decisions about how best to manage the COVID pandemic. See *South Bay United Pentecostal Church* v. *Newsom*, 590 U. S. 965, 967 (2020) (ROBERTS, C. J., concurring in denial of application for injunctive relief). But the Wisconsin legislature has not for a moment considered whether recent COVID conditions demand changes to the State's election rules; that body has not even met since April. Compare Litke, Fact Check: Wisconsin Legislators Have Gone About 6 Months Without Passing a Bill, USA Today, Oct. 7, 2020 (online source archived at www.supremecourt.gov) ("Wisconsin lawmakers have been among the least active in the country, according to a database of all COVID-related legislation across the country maintained by the National Conference of State Legislatures"), with *Andino* v. *Middleton*, 592 U. S. 906 (2020) (staying an order enjoining South Carolina's witness requirement for mail ballots when that rule was part of a legislative package to adjust voting procedures in response to COVID). And if there is one area where deference to legislators should not shade into acquiescence, it is election law. For in that field politicians' incentives often conflict with voters' interests—that is, whenever suppressing votes benefits the lawmakers who make the rules.

II

JUSTICE KAVANAUGH's concurring opinion goes further than the court of appeals. Rather than relying on *Purcell* and deference alone, he also concludes that Wisconsin's election rules, as applied during the COVID pandemic, do not violate the right to vote. See *ante*, at 1047–1048. That follows, in his view, because voting by mail is "easy" in Wisconsin and because in-person voting is "reasonably safe." *Ante*, at 1050, 1051, 1056.[4] (In another concurrence, JUSTICE GORSUCH agrees. *Ante*, at 1040.)

[4] Oddly, the concurrence suggests that no change in the State's ballot-receipt deadline is needed because Wisconsin has "incorporated the lessons" from April's primary "into its extensive planning for the November election." *Ante*, at 1048. But the April election was conducted under the same extended deadline that the Court today precludes. See *supra*, at 1056. One might have thought the April election's principal lesson is that a slightly altered ballot-receipt deadline can save thousands of timely cast mail ballots from the garbage bin.

The first problem with that reasoning is that the district court found to the contrary. As this Court constantly states, a district court has the greatest familiarity with the facts in a case, because it oversees the development and presentation of evidence. See, *e. g.*, *Purcell*, 549 U. S., at 5; see also Fed. Rule Civ. Proc. 52(a). That is why the court of appeals rightly did not question any of the lower court's findings. See *supra*, at 1052. And why the concurrence is wrong to take a different tack.

Recall that the district court's findings include the following. See *supra*, at 1057–1058. The COVID pandemic has been getting worse and worse in Wisconsin. And as the State has "broken numerous new case records," in-person voting—according to credible expert testimony—creates a "signifcant [health] risk," especially for older and sicker citizens. 488 F. Supp. 3d, at 792, 794. For that reason, Wisconsinites have turned to the mails. According to the state elections commission, close to 2 million people are likely to request mail ballots. See *id.*, at 792. (That is about double the number of already-returned ballots that the concurrence chooses to emphasize. See *ante*, at 1048, 1050, 1056.) State election offces have not received the resources they need to deal with that infux of applications, and severe administrative backlogs have therefore developed. See 488 F. Supp. 3d, at 792. Postal Service delays, detailed by both state and federal offcials, compound the risk that voters will be unable to return timely requested mail ballots by Election Day. See *id.*, at 792–793. And if a voter discovers on Election Day that her mail ballot has not yet arrived, Wisconsin law prevents her from voting in person—even assuming she would undertake the risk. See Wis. Stat. § 6.86(6) (2017–2018). All these facts would mean, as the chair of the Wisconsin Elections Commission testifed, that many thousands of timely requested and postmarked votes—potentially into the six-fgure range—would not be counted without a short extension of the ballot-receipt deadline. See 488 F. Supp. 3d, at 807; Electronic Case Filing in No. 3–20–cv–459, Doc. 299 (WD Wis.), p. 9.

The concurrence fails to give those findings the respect they are due. Of course, the concurrence *says* it is not committing that elementary error; according to JUSTICE KAVANAUGH, he disputes only the district court's "speculative predictions," not its statement of "historical facts." *Ante*, at 1054. But the concur-

rence alternately rejects, ignores, or accepts only *pro forma* the district court's account of the facts (just the facts). In responding to this dissent, the concurring opinion acknowledges that in-person voting in Wisconsin "can pose a health risk." *Ibid.* Yet in condemning the injunction, it continues to insist—how else could it reach the decision it does?—that going to the polls is "reasonably safe" for Wisconsin's citizens, contrary to the expert testimony the district court relied on. *Ante*, at 1056. Similarly, the concurrence nods glancingly to increased ballot applications, see *ante*, at 1054, but it fails to recount (as the district court did in detail) how that infux has created heavy backlogs and prevented ballots from issuing in timely fashion. And it does not discuss the evidence of unusual, even unprecedented, delays in postal delivery service in Wisconsin. In short, the concurrence refuses to engage with the core of the analysis supporting the district court's injunction: that a veritable tsunami (in the form of a pandemic) has hit Wisconsin's election machinery, and disrupted all its usual mail ballot operations. And as to the supposedly "speculative prediction" that without the ballot-receipt extension as many as 100,000 timely cast mail votes would go uncounted? That estimate itself derived from the factual f ndings just listed, along with the credible testimony of the elections commission's chair—all matters indisputably entitled to deference from an appellate tribunal. Those f ndings, and not the concurrence's substitute facts purporting to show that voting in Wisconsin is safe and easy, should properly ground today's decision.[5]

A related faw in the concurring opinion is how much it reasons from normal, pre-pandemic conditions. Cf. *Republican National Committee* v. *Democratic National Committee*, 589 U. S. 423, 429 (2020) (Ginsburg, J., dissenting) ("The Court's suggestion that the current situation is not substantially different from an ordinary election boggles the mind") (internal quotation marks omitted). A "reasonable election deadline," the concurrence says, "does not

[5] Note as well that nothing rides on the exactness of the district court's estimate. Suppose that without the ballot-receipt extension, only (only?) half as many votes would be discarded as the district court thought. The court's decision would have remained the same, and so too everything I say here. But as for the concurrence? Who can know? JUSTICE KAVANAUGH does not reveal how many uncounted votes he thinks would violate the Constitution. Nor does he suggest how many votes short of that level will be discarded because of the Court's decision today.

disenfranchise voters." *Ante*, at 1050. I have no argument with that statement, even though some voters may overlook the deadline. See *Rosario* v. *Rockefeller*, 410 U. S. 752, 757–758 (1973). But what is "reasonable" in one set of circumstances may become unreasonable in another. And when that switch occurs, a constitutional problem arises. So it matters not that Wisconsin could apply its ballot-receipt deadline when ballots moved rapidly through the mails and people could safely vote in person. At *this* time, neither condition holds—again, according to the district court's eminently believable f ndings. Today, mail ballots often travel at a snail's pace, and the elderly and ill put themselves in peril if they go to the polls. So citizens—thousands and thousands of them—who have followed all the State's rules still cannot cast a successful vote. And because that is true, the ballot-receipt deadline that once survived constitutional review no longer does.[6]

That deadline, contrary to JUSTICE KAVANAUGH's view, now disenfranchises Wisconsin citizens—however much he objects to applying that term here. Far from using the word "rhetoric[ally]," *ante*, at 1054, I mean it precisely. During COVID, the State's ballot-receipt deadline and the Court's decision upholding it disenfranchise citizens by depriving them of their constitutionally guaranteed right to vote. Because the Court refuses to reinstate the district court's injunction, Wisconsin will throw out thousands of timely requested and timely cast mail ballots. And today's decision does not stand alone. In other recent cases as well, the Court has halted injunctions necessary for people to cast ballots safely. See *Merrill* v. *People First of Ala.*, 592 U. S. 1035 (2020); *Merrill* v. *People First of Ala.*, 591 U. S. 1024 (2020); *Republican*

[6] The concurrence is wrong to view that conclusion as casting doubt on all similar deadlines in all other States. See *ante*, at 1050. The district court rested its constitutional judgment, as I would too, on a confuence of factors: COVID conditions in Wisconsin, the scarce time between the State's ballot-application and ballot-receipt deadlines, evidence about in-state mail delivery and the administrative capacity of state election offces. See *supra*, at 1056–1058, 1062. In another State with all the same facts, the same result should obtain. But in another State with different facts—say, a less intense outbreak of COVID, an earlier ballot-application deadline, faster mail delivery, and better staffed and funded election offces—the constitutional analysis should come out a different way.

National Committee, 589 U. S. 423.[7] As the COVID pandemic rages, the Court has failed to adequately protect the Nation's voters.

* * *

For all these reasons, I would vacate the court of appeals' stay. The facts, as found by the district court, are clear: Tens of thousands of Wisconsinites, through no fault of their own, may receive their mail ballots too late to return them by Election Day. Without the district court's order, they must opt between "brav[ing] the polls," with all the risk that entails, and "los[ing] their right to vote." *Republican National Committee*, 589 U. S., at 432 (Ginsburg, J., dissenting). The voters of Wisconsin deserve a better choice.

No. 20–18. LANGE *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist., Div. 5. [Certiorari granted, 592 U. S. 1024.] Amanda K. Rice, Esq., of Ann Arbor, Mich., is invited to brief and argue as *amicus curiae* in support of the judgment below.

OCTOBER 28, 2020

Miscellaneous Order

No. 20A71. WISE ET AL. *v.* CIRCOSTA, CHAIR, STATE BOARD OF ELECTIONS, ET AL. D. C. M. D. N. C. Application for injunctive relief, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. JUSTICE THOMAS, JUSTICE ALITO, and JUSTICE GORSUCH would grant the application on the issue of the ballot-receipt deadline. JUSTICE BARRETT took no part in the consideration or decision of this application.

No. 20A72. MOORE ET AL. *v.* CIRCOSTA, CHAIR, STATE BOARD OF ELECTIONS, ET AL. D. C. E. D. N. C. Application for injunc-

[7] At the same time that JUSTICE KAVANAUGH defends this stance by decrying a "federal-judges-know-best vision of election administration," *ante*, at 1050, he calls for *more* federal court involvement in "reviewing state-court decisions about state [election] law," *ante*, at 1049, n. 1. It is hard to know how to reconcile those two views about the federal judiciary's role in voting-rights cases. Contrary to JUSTICE KAVANAUGH's attempted explanation, neither the text of the Elections Clause nor our precedent interpreting it leads to his inconstant approach. See *Arizona State Legislature* v. *Arizona Independent Redistricting Comm'n*, 576 U. S. 787, 817–818 (2015); *Smiley* v. *Holm*, 285 U. S. 355, 372 (1932).

tive relief, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. JUSTICE BARRETT took no part in the consideration or decision of this application. JUSTICE THOMAS would grant the application.

JUSTICE GORSUCH, with whom JUSTICE ALITO joins, dissenting.

This summer, the General Assembly of North Carolina adopted new election laws expressly designed to address the challenges COVID posed to a fast-approaching election. Among other things, the General Assembly reduced the witness requirement for absentee ballots from two witnesses to one, 2019 N. C. Sess. Laws 2020–17, § 1.(a); freed up more individuals to staff polling centers, § 1.(b); created a mechanism to allow voters to track their ballots, § 3.(a); enabled voters to request absentee ballots online, § 7.(a); and increased funding to ensure the State's in-person and absentee voting infrastructure could withstand "the coronavirus pandemic," §§ 11.1(a)–(f). At the same time, the General Assembly judged it appropriate to retain certain other existing election rules, like the State's deadline for the receipt of absentee ballots. Accordingly, under state law, absentee ballots must be postmarked on or before election day, and they must be received "not later than three days after" election day. N. C. Gen. Stat. Ann. § 163–231(b)(2)b (2019).

Despite the General Assembly's considered judgment about the appropriate response to COVID, other state actors—including the State Board of Elections—recently chose to issue their own additional and supplemental set of amendments to state election laws. Relevant here, they purported to extend the absentee ballot receipt deadline by six days, up to November 12.

That last part should sound familiar. Just days ago, this Court rejected a similar effort to rewrite a state legislature's election deadlines. Wisconsin (like North Carolina) has a ballot receipt deadline enshrined in statute. All the same, a federal district court decided to order Wisconsin to extend its deadline by six days. The Seventh Circuit stayed that ruling, and we agreed with its disposition. For many of the same reasons I believe that decision was correct, I believe we should stay the Board's action here. See *Democratic National Committee* v. *Wisconsin State Legislature*, 592 U. S. 1039, 1040 (2020) (GORSUCH, J., concurring). In some respects, this case may be even more egregious, given that a state court and the Board worked together to override

a carefully tailored legislative response to COVID. Indeed, the president *pro tempore* of the North Carolina Senate and the speaker of its House of Representatives have intervened on behalf of the General Assembly to oppose revisions to its work.

The parties before us all acknowledge that, under the Federal Constitution, only the state "Legislature" and "Congress" may prescribe "[t]he Times, Places and Manner of holding Elections." Art. I, § 4, cl. 1. Everyone agrees, too, that the North Carolina Constitution expressly vests all legislative power in the General Assembly, not the Board or anyone else. N. C. Const., Art. II, § 1; cf. N. C. Const., Art. I, § 6. So we need not go rif ing through state law to understand the Board's permissible role in (re)writing election laws. All we need to know about its authority to override state election laws is plain from the Federal and State Constitutions.

Besides, even assuming the North Carolina General Assembly could delegate its Elections Clause authority to other offcia ls, its representatives contend before us that it has not authorized the deadline extension here, and understandably so. State law provides the Board with supervisory authority over elections. N. C. Gen. Stat. Ann. § 163–22(a). But that authority permits the Board to prescribe regulations only if "they do not conf ict" with state statutory law. *Ibid.* State law also furnishes the Board with power to fashion interim rules. § 163–22.2. But that power too is circumscribed, triggered when a state statute has been (or likely would be) invalidated by a court. That doesn't sound like a blank check to the Board allowing it to rewrite the election code in any and all consent decrees it may wish to enter. Finally, state law confers upon the Board certain emergency powers. § 163–27.1. But, relevant for our purposes, the Board may exercise those powers only when three conditions are met: (1) "the normal schedule for the election is disrupted" (2) by a "natural disaster" and (3) provided that the Board's actions do not "unnecessar[ily] conf ict" with statutory law. *Ibid.* There is no ground for thinking that the election "schedule" has been "disrupted": North Carolina stands fully equipped to conduct its election on November 3. Nor is COVID like the "natural disasters" the Board has pointed to in the past (*e. g.*, hurricanes or power outages) that can disrupt the mechanics of running an election, especially given that the General Assembly has long known about the pandemic's challenges and expressly prepared for them. Finally,

the change the Board adopted was deemed "unnecessary" by the General Assembly when it *retained* the statutory ballot receipt deadline after considering COVID's impact on election processes. Any single one of these three problems is enough to sink the Board's action.

In the Fourth Circuit, Judges Wilkinson, Agee, and Niemeyer thoughtfully explained the Board's constitutional overreach and the broader problems with last-minute election-law-writing-by-lawsuit. As they observed, efforts like these not only offend the Elections Clause's textual commitment of responsibility for election lawmaking to state and federal legislators, they do damage to faith in the written Constitution as law, to the power of the people to oversee their own government, and to the authority of legislatures. Such last-minute changes by largely unaccountable bodies, too, invite confusion, risk altering election outcomes, and in the process threaten voter confdence in the results. *Wise* v. *Circosta*, 978 F. 3d 93, 104 (CA4 2020) (en banc) (Wilkinson and Agee, JJ., joined by Niemeyer, J., dissenting). Respectfully, for all these reasons I would grant the application to stay the Board's action.

No. 20–542. Republican Party of Pennsylvania *v.* Boockvar, Secretary of Pennsylvania, et al. Sup. Ct. Pa. Motion to expedite consideration of petition for writ of certiorari denied. Justice Barrett took no part in the consideration or decision of this motion.

Additional opinions may follow.

Statement of Justice Alito, with whom Justice Thomas and Justice Gorsuch join.

The Court's handling of the important constitutional issue raised by this matter has needlessly created conditions that could lead to serious post-election problems. The Supreme Court of Pennsylvania has issued a decree that squarely alters an important statutory provision enacted by the Pennsylvania Legislature pursuant to its authority under the Constitution of the United States to make rules governing the conduct of elections for federal offce. See Art. I, § 4, cl. 1; Art. II, § 1, cl. 2; *Bush* v. *Palm Beach County Canvassing Bd.*, 531 U. S. 70, 76 (2000) (*per curiam*). In a law called Act 77, the legislature permitted all voters to cast their ballots by mail but unambiguously required that all mailed ballots be received by 8 p.m. on election day. 2019 Pa.

Leg. Serv. Act 2019–77; see Pa. Stat. Ann., Tit. 25, §§ 3146.6(c), 3150.16(c) (Purdon 2020). It also specifed that if this provision was declared invalid, much of the rest of Act 77, including its liberalization of mail-in voting, would be void. Act 77, § 11. The legislature subsequently made it clear that, in its judgment, the COVID–19 pandemic did not call for any change in the election-day deadline. In a law enacted in March 2020, the legislature addressed election-related issues caused by the pandemic, but it chose not to amend the deadline for the receipt of mailed ballots. See Pa. Leg. Serv. Act 2020–12.

In the face of Act 77's deadline, the Pennsylvania Supreme Court, by a vote of four to three, decreed that mailed ballots need not be received by election day. *Pennsylvania Democratic Party* v. *Boockvar*, 662 Pa. 39, 106, 238 A. 3d 345, 386 (2020). Instead, it imposed a different rule: Ballots are to be treated as timely if they are postmarked on or before election day and are received within three days thereafter. *Id.*, at 82, 238 A. 3d, at 371. In addition, the court ordered that a ballot with no postmark or an illegible postmark must be regarded as timely if it is received by that same date. *Ibid.*, n. 26. The court expressly acknowledged that the statutory provision mandating receipt by election day was unambiguous and that its abrogation of that rule was not based on an interpretation of the statute. *Id.*, at 78, 238 A. 3d, at 369. It further conceded that the statutory deadline was constitutional on its face, but it claimed broad power to do what it thought was needed to respond to a "natural disaster," and it justifed its decree as necessary to protect voters' rights under the Free and Equal Elections Clause of the State Constitution. *Id.*, at 79–81, 238 A. 3d, at 369–371.

A month ago, the Republican Party of Pennsylvania and the Pennsylvania Senate leaders asked this Court to stay the Pennsylvania Supreme Court's decision pending the f ling and disposition of a petition for certiorari. See *Republican Party of Pennsylvania* v. *Boockvar*, No. 20A54; *Scarnati* v. *Boockvar*, No. 20A53. They argued that the state court decision violated the previously cited constitutional provisions, as well as the federal statute setting a uniform date for federal elections. Application for Stay in No. 20A54, p. 2; Application for Stay in No. 20A53, pp. 2–3. Respondent, Democratic Party of Pennsylvania (DPP), agreed that the constitutionality of the State Supreme Court's decision was a matter of national importance and urged us to grant review and to decide the issue before the election. DPP Response to Application for Stay in No. 20A53 etc., p. 9. Instead of doing

what either party sought, the Court simply denied the stay. Although there were four votes to enter a stay, the application failed by an equally divided vote. Now, in a last ditch attempt to prevent the election in Pennsylvania from being conducted under a cloud, we have been asked to grant a petition for a writ of certiorari, to expedite review, and to decide the constitutional question prior to the election.

It would be highly desirable to issue a ruling on the constitutionality of the State Supreme Court's decision before the election. That question has national importance, and there is a strong likelihood that the State Supreme Court decision violates the Federal Constitution. The provisions of the Federal Constitution conferring on state legislatures, not state courts, the authority to make rules governing federal elections would be meaningless if a state court could override the rules adopted by the legislature simply by claiming that a state constitutional provision gave the courts the authority to make whatever rules it thought appropriate for the conduct of a fair election. See Art. I, § 4, cl. 1; Art. II, § 1, cl. 2.

For these reasons, the question presented by the Pennsylvania Supreme Court's decision calls out for review by this Court—as both the State Republican and Democratic Parties agreed when the former applied for a stay. But I reluctantly conclude that there is simply not enough time at this late date to decide the question before the election.

That does not mean, however, that the state court decision must escape our review. Although the Court denies the motion to expedite, the petition for certiorari remains before us, and if it is granted, the case can then be decided under a shortened schedule. In addition, the Court's denial of the motion to expedite is not a denial of a request for this Court to order that ballots received after election day be segregated so that if the State Supreme Court's decision is ultimately overturned, a targeted remedy will be available. Petitioner represents that it will apply to this Court to obtain that modest relief, Reply in Support of Motion for Expedited Review 3, and respondent DPP agrees that such relief is appropriate, Opp. to Motion for Expedited Review 7. Although the Pennsylvania Supreme Court rejected petitioner's request for that relief, we have been informed by the Pennsylvania Attorney General that the Secretary of the Commonwealth issued guidance today directing county boards of elections to segregate ballots received

between 8 p.m. on November 3, 2020, and 5 p.m. on November 6, 2020. Nothing in the Court's order today precludes petitioner from applying to this Court for relief if, for some reason, it is not satisfed with the Secretary's guidance.

OCTOBER 29, 2020

Miscellaneous Order

No. 20A74. BERGER ET AL. *v.* NORTH CAROLINA STATE BOARD OF ELECTIONS ET AL. Super. Ct. N. C., Wake County. Application for stay, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. JUSTICE THOMAS, JUSTICE ALITO, and JUSTICE GORSUCH would grant the application on the issue of the ballot-receipt deadline. JUSTICE BARRETT took no part in the consideration or decision of this application.

NOVEMBER 2, 2020*

Certiorari Granted—Vacated and Remanded. (See *Mckesson* v. *Doe*, 592 U. S. 1 (2020); and *Taylor* v. *Riojas*, 592 U. S. 7 (2020).)

Certiorari Dismissed

No. 20–5559. SUNDY *v.* FRIENDSHIP PAVILION ACQUISITION CO., LLC, ET AL. Sup. Ct. Ga. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 20–5566. WILSON *v.* FLORIDA ET AL. Dist. Ct. App. Fla., 4th Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 20–5682. RANTEESI *v.* ARNOLD, WARDEN. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 20M33. CIROTA *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Motion to direct the Clerk to f le petition for writ of certiorari out of time denied.

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*JUSTICE BARRETT took no part in the consideration or decision of the orders announced on this date.

No. 65, Orig. TEXAS *v.* NEW MEXICO. Conditional motion of Texas for review of the River Master's 2020 final determination granted. [For earlier order herein, see, *e. g.*, 589 U. S. 1273.]

No. 19–416. NESTLÉ USA, INC. *v.* DOE ET AL.; and
No. 19–453. CARGILL, INC. *v.* DOE ET AL. C. A. 9th Cir. [Certiorari granted, 591 U. S. 1025.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 20–219. CUMMINGS *v.* PREMIER REHAB KELLER, P. L. L. C. C. A. 5th Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 20–5531. HOLMES *v.* BECKER ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 23, 2020, within which to pay the docketing fee required by this Court's Rule 38(a).

No. 20–5896. IN RE WEISSERT;
No. 20–5932. IN RE JOHNSON; and
No. 20–5944. IN RE CALMESE. Petitions for writs of habeas corpus denied.

No. 20–5515. IN RE MERRILL. Petition for writ of mandamus denied.

No. 20–269. IN RE STONE. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 19–1436. DEMARTINI *v.* TOWN OF GULF STREAM, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 942 F. 3d 1277.

No. 19–1445. HI-TECH PHARMACEUTICALS, INC., ET AL. *v.* FEDERAL TRADE COMMISSION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 786 Fed. Appx. 947.

No. 19–1447. MANZANO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 945 F. 3d 616.

No. 19–8332. RHOADES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 8 Cal. 5th 393, 453 P. 3d 89.

No. 19–8375. Robinson *v.* Horton, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 950 F. 3d 337.

No. 19–8594. Darrell *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 945 F. 3d 929.

No. 19–8598. Pizzuto *v.* Yordy, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 947 F. 3d 510.

No. 19–8821. Santiago-Ortiz *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 797 Fed. Appx. 34.

No. 19–8900. Brown *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 786 Fed. Appx. 499.

No. 19–8921. Floyd *v.* Gittere, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 949 F. 3d 1128.

No. 19–8929. Preston *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 769 Fed. Appx. 707.

No. 20–50. Voss *v.* Goode. C. A. 5th Cir. Certiorari denied. Reported below: 954 F. 3d 234.

No. 20–53. Aguilar Fermin *v.* Barr, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 958 F. 3d 887.

No. 20–58. Smith *v.* Vestavia Hills Board of Education. C. A. 11th Cir. Certiorari denied. Reported below: 791 Fed. Appx. 127.

No. 20–88. HZNP Finance Ltd. et al. *v.* Actavis Laboratories UT, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 940 F. 3d 680.

No. 20–188. Zhiheng Sheng *v.* Snyder. Ct. App. Ga. Certiorari denied.

No. 20–195. Muckleshoot Indian Tribe *v.* Tulalip Tribes et al. C. A. 9th Cir. Certiorari denied. Reported below: 944 F. 3d 1179.

No. 20–199. Clark *v.* Inco Champion National Security, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 952 F. 3d 570.

No. 20–200. McCoy *v.* Bullock et al. Ct. App. Ohio, 9th App. Dist., Summit County. Certiorari denied. Reported below: 2019-Ohio-3169.

No. 20–204. MING WEI *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 796 Fed. Appx. 143.

No. 20–207. BUSH-PENSY *v.* PFLIEGER. Ct. App. Wis. Certiorari denied. Reported below: 2019 WI App 58, 389 Wis. 2d 104, 936 N. W. 2d 404.

No. 20–210. JING SHU ZHENG *v.* ELLIS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 551.

No. 20–213. DEY *v.* LI-HUEI TSAI ET AL. C. A. 1st Cir. Certiorari denied.

No. 20–218. ABASCAL-MONTALVO *v.* CITY OF NEW YORK, NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 179 App. Div. 3d 620, 114 N. Y. S. 3d 879.

No. 20–225. MUENSTER *v.* DISCIPLINARY BOARD OF THE WASHINGTON STATE BAR ASSN. Sup. Ct. Wash. Certiorari denied. Reported below: 195 Wash. 2d 276, 457 P. 3d 1139.

No. 20–229. WOOLEN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 20–235. MIERZWA *v.* DUDEK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 793 Fed. Appx. 105.

No. 20–236. WELLS *v.* NELSON ET AL. Sup. Ct. Ky. Certiorari denied.

No. 20–242. CAVE *v.* DELTA DENTAL OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 788 Fed. Appx. 430.

No. 20–243. ROBISON *v.* CITIBANK, N. A., ET AL. Sup. Ct. Fla. Certiorari denied.

No. 20–246. PENCE ET AL. *v.* VNB NEW YORK, LLC, AS SUCCESSOR BY MERGER TO VNB NEW YORK CORP., AS SUCCESSOR IN INTEREST TO THE PARK AVENUE BANK. Ct. App. Ky. Certiorari denied.

No. 20–247. BELANUS *v.* DUTTON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 1014.

No. 20–248. ROUNDS *v.* KOCH ET AL. C. A. 1st Cir. Certiorari denied.

No. 20–262. ALEX ET AL. *v.* T-MOBILE USA, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 795 Fed. Appx. 290.

No. 20–264. BONA *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2018 IL App (2d) 160581, 118 N. E. 3d 1272.

No. 20–270. ROSAS *v.* R. K. KENZIE CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 933.

No. 20–275. BOYD *v.* TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 254.

No. 20–284. BARONE *v.* WELLS FARGO BANK, N. A. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 20–290. MEYERS ET AL. *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 812 Fed. Appx. 11.

No. 20–323. BARTH *v.* CITY OF PEABODY, MASSACHUSETTS. C. A. 1st Cir. Certiorari denied.

No. 20–328. WILSON, AS EXECUTOR OF THE ESTATE OF WILSON *v.* DALLAS COUNTY HOSPITAL DISTRICT, DBA PARKLAND HEALTH AND HOSPITAL SYSTEM. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 20–329. SOWELL ET AL. *v.* TINLEY, RENEHAN & DOST, LLP, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 807 Fed. Appx. 115.

No. 20–339. WINER *v.* NEGRON ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 797 Fed. Appx. 660.

No. 20–341. MCDANIEL *v.* WILKIE, SECRETARY OF VETERANS AFFAIRS. C. A. 6th Cir. Certiorari denied.

No. 20–342. KYKO GLOBAL INC. ET AL. *v.* BHONGIR. C. A. 3d Cir. Certiorari denied. Reported below: 807 Fed. Appx. 148.

No. 20–358. HENRY *v.* JOHNSON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 950 F. 3d 1005.

No. 20–372. PHILLIPS *v.* CHAPPELL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 778 Fed. Appx. 521.

No. 20–373. ABRAMS *v.* NEWSOM, GOVERNOR OF CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 305.

No. 20–383. PAR, INC., ET AL. *v.* RICHARDS. C. A. 7th Cir. Certiorari denied. Reported below: 954 F. 3d 965.

No. 20–384. CORN ET AL. *v.* MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 954 F. 3d 268.

No. 20–390. MACK *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 296 So. 3d 906.

No. 20–411. WASH *v.* OHIO. Ct. App. Ohio, 12th App. Dist., Preble County. Certiorari denied. Reported below: 2020-Ohio-152.

No. 20–415. ALEMAN *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 469 Md. 397, 230 A. 3d 97.

No. 20–420. JORDAN *v.* DEPARTMENT OF LABOR. C. A. 8th Cir. Certiorari denied. Reported below: 794 Fed. Appx. 557.

No. 20–5217. SPARRE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 289 So. 3d 839.

No. 20–5395. SHEFFIELD *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 281.

No. 20–5452. THORPE *v.* SWIDLER ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 20–5454. SHIELDS *v.* SMITH, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 786.

No. 20–5455. SEPEHRY-FARD *v.* AURORA BANK, FSB, ET AL. Sup. Ct. Cal. Certiorari denied.

No. 20–5459. EARL *v.* VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 201.

No. 20–5461. CAMILO *v.* NEW JERSEY STATE PAROLE BOARD. Super. Ct. N. J., App. Div. Certiorari denied.

No. 20–5462. ELLISON *v.* NEUSCHMID, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 20–5466. CONE *v.* DOWLING, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 523.

No. 20–5467. LOPEZ *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 595 S. W. 3d 897.

No. 20–5468. MANNING *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 20–5471. DANIELS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 20–5483. BLACK *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5484. ABDULRAZZAK *v.* SMITH ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 48.

No. 20–5492. JOHNSTON *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 949 F. 3d 619.

No. 20–5493. REED *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 20–5495. SANCHEZ *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 936.

No. 20–5500. SPATARU *v.* ANTONIO SUAREZ ET AL. Sup. Ct. Fla. Certiorari denied.

No. 20–5501. HERSH *v.* GARMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 20–5502. KIRK *v.* RICHARDSON ET AL. Sup. Ct. Fla. Certiorari denied.

No. 20–5505. JOHNSON *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 285 So. 3d 940.

No. 20–5509. PUGH *v.* DELOACH, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 20–5511. PITTMAN *v.* PITTMAN. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2019 IL App (1st) 161316–U.

No. 20–5512. MILLER *v.* HARRIS, CLERK, SUPREME COURT OF THE UNITED STATES, ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–5516. GARBARINI *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 20–5518. VANCE *v.* BUCHANAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5521. WILLIAMS *v.* KELLY, ASSISTANT WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 353.

No. 20–5522. BLOUNT *v.* BEECHER. Ct. App. Ga. Certiorari denied.

No. 20–5526. BLANCO *v.* ASUNCION, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 20–5529. BERNARD *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 20–5538. BOONE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 20–5541. SACHS *v.* BANK OF AMERICA, N. A. C. A. 1st Cir. Certiorari denied.

No. 20–5545. KLEBBA-SHULGA *v.* SHULGA. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2019 IL App (1st) 182028, 144 N. E. 3d 574.

No. 20–5547. BAKER *v.* MAGISTRATE COURT OF GEORGIA, TALBOT COUNTY. Sup. Ct. Ga. Certiorari denied.

No. 20–5550. LINDBLOOM *v.* MANATEE COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 745.

No. 20–5551. OHIO EX REL. KERR *v.* POLLEX ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 159 Ohio St. 3d 317, 2020-Ohio-411, 150 N. E. 3d 907.

No. 20–5556. ESPINOSA DORANTES *v.* GENOVESE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5567. AMES *v.* HSBC BANK, USA, N. A. Ct. App. Wash. Certiorari denied. Reported below: 11 Wash. App. 2d 1013.

No. 20–5570. MOORE *v.* STIRLING, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 952 F. 3d 174.

No. 20–5591. EDWARDS *v.* FRAKES, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. Ct. App. Neb. Certiorari denied. Reported below: 28 Neb. App. xx.

No. 20–5592. LIPSEY *v.* GOREE ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–5593. EARP *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 778 Fed. Appx. 246.

No. 20–5594. LUCY *v.* ESTATE OF FOX. Ct. Civ. App. Ala. Certiorari denied.

No. 20–5618. RILEY *v.* NOETH, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 802 Fed. Appx. 7.

No. 20–5629. WALLER *v.* LAUGHLIN, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 20–5651. GISH *v.* HEPP, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 955 F. 3d 597.

No. 20–5671. WARD *v.* MICHIGAN ATTORNEY GRIEVANCE COMMISSION. Sup. Ct. Mich. Certiorari denied.

No. 20–5679. TANAMOR-STEFFAN *v.* BARR, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 20–5694. ENDSLEY *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 20–5698. HERNANDEZ *v.* SHINN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–5699. MUHAMMAD *v.* NEBRASKA. Ct. App. Neb. Certiorari denied. Reported below: 28 Neb. App. xxiv.

No. 20–5700. MOSS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 294 So. 3d 887.

No. 20–5708. MIRANDA *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 484 Mass. 799, 146 N. E. 3d 435.

No. 20–5716. ZIEGENFUSS *v.* MACKEY ET AL. Sup. Ct. Ariz. Certiorari denied.

No. 20–5729. WESTMORELAND *v.* JOHNSON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–5754. KARUPAIYAN *v.* NEW YORK CITY DEPARTMENT OF EDUCATION. C. A. 2d Cir. Certiorari denied.

No. 20–5758. WOODARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 20–5769. BEAUCHAMP *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 20–5771. NIXON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 20–5772. PORTANOVA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 961 F. 3d 252.

No. 20–5779. WOODS *v.* SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 199.

No. 20–5781. ABMUHAMMAD *v.* NEBRASKA. Dist. Ct. Neb., Lancaster County. Certiorari denied.

No. 20–5787. GODARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 209.

No. 20–5792. PIERCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 111.

No. 20–5798. VELASQUEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 655.

No. 20–5799. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 389.

No. 20–5805. RESNICK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 958 F. 3d 196.

No. 20–5806. GRIEGO *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 20–5809. MARTINEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 421.

No. 20–5812. DUNLAP *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 593.

No. 20–5818. JOHNSTON *v.* RANSOM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 20–5825. NANCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 957 F. 3d 204.

No. 20–5829. FRUIT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 961 F. 3d 264.

No. 20–5832. GRAHAM *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 20–5860. ANTONIO WOOTEN *v.* MONTGOMERY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 124.

No. 20–5884. GIESE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 6. Certiorari denied.

No. 20–5895. LOWE *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied.

No. 20–5902. SEXTON *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 19–1098. NATIONAL FOOTBALL LEAGUE ET AL. *v.* NINTH INNING, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 933 F. 3d 1136.

Statement of JUSTICE KAVANAUGH respecting the denial of certiorari.

In this antitrust case, the plaintiffs challenged the National Football League's contract with DirecTV for the television rights to out-of-market games. That contract has been in place for 26

years. The District Court dismissed the plaintiffs' suit. But the Court of Appeals reversed, holding that the plaintiffs' complaint suffciently alleged that the contract may be illegal under the antitrust laws. Ordinarily, a decision of such legal and economic signifcance might warrant this Court's review. But the case comes to us at the motion-to-dismiss stage, and the interlocutory posture is a factor counseling against this Court's review at this time. See *Abbott* v. *Veasey*, 580 U. S. 1104, 1105 (2017) (ROBERTS, C. J., statement respecting denial of certiorari).

I write separately simply to explain that the denial of certiorari should not necessarily be viewed as agreement with the legal analysis of the Court of Appeals.

Under the existing contract, the 32 NFL teams have authorized the NFL to sell the television rights for out-of-market games to a single buyer, DirecTV. The plaintiffs argue, and the Court of Appeals agreed, that antitrust law may require each team to negotiate an individualized contract for televising only its own games. But that conclusion appears to be in substantial tension with antitrust principles and precedents. The NFL and its member teams operate as a joint venture. See *Smith* v. *Pro Football, Inc.*, 593 F. 2d 1173, 1179 (CADC 1978). And antitrust law likely does not require that the NFL and its member teams compete against each other with respect to television rights. Cf. *American Needle, Inc.* v. *National Football League*, 560 U. S. 183, 202 (2010) ("NFL teams . . . must cooperate in the production and scheduling of games"); R. Bork, The Antitrust Paradox 278 (1978).

Moreover, the plaintiffs may not have antitrust standing to sue the NFL and the individual teams. This Court's case law "authorizes suits by *direct* purchasers but bars suits by *indirect* purchasers." *Apple Inc.* v. *Pepper*, 587 U. S. 273, 279 (2019). The plaintiffs here did not purchase a product from the NFL or any team, and may therefore be barred from bringing suit against the NFL and its teams under *Illinois Brick Co.* v. *Illinois*, 431 U. S. 720 (1977).

In sum, the defendants—the NFL, its teams, and DirecTV—have substantial arguments on the law. If the defendants do not prevail at summary judgment or at trial, they may raise those legal arguments again in a new petition for certiorari, as appropriate.

No. 19–1412. JOHNSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the con-

sideration or decision of this petition.* Reported below: 945 F. 3d 606.

No. 19–7309. DAILEY *v.* FLORIDA. Sup. Ct. Fla. Motions of United States Conference of Catholic Bishops et al. and Conservatives Concerned About the Death Penalty for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 279 So. 3d 1208.

No. 20–5557. CROWNHART *v.* STRIVE. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition.*

Rehearing Denied

No. 19–8227. CARRIER *v.* COLORADO, 590 U. S. 982. Motion for leave to file petition for rehearing denied.

NOVEMBER 9, 2020

Certiorari Dismissed

No. 20–5624. FRANCISCO VEGA *v.* POPPELL, SECRETARY, FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 20–5638. CATERBONE *v.* LANCASTER COUNTY PRISON ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 811 Fed. Appx. 721.

No. 20–5971. CROSBY *v.* TRUE, WARDEN. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. JUSTICE GORSUCH took no part in the consideration or decision of this motion and this petition. Reported below: 826 Fed. Appx. 699.

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*See also note, 592 U. S. 1071.

Miscellaneous Orders

No. 20A56. TIMBES *v.* DEUTSCHE BANK NATIONAL TRUST CO. Application for stay, addressed to JUSTICE SOTOMAYOR and referred to the Court, denied.

No. 20M34. DARDEN *v.* CITY OF FORT WORTH, TEXAS; and
No. 20M35. KITCHEN *v.* BASF. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 20M36. SEALED APPELLANT *v.* SEALED APPELLEE. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 18–1447. REPUBLIC OF HUNGARY ET AL. *v.* SIMON ET AL. C. A. D. C. Cir. [Certiorari granted, 591 U. S. 1025.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 19–351. FEDERAL REPUBLIC OF GERMANY ET AL. *v.* PHILIPP ET AL. C. A. D. C. Cir. [Certiorari granted, 591 U. S. 1025.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.]

No. 19–422. COLLINS ET AL. *v.* MNUCHIN, SECRETARY OF THE TREASURY, ET AL.; and
No. 19–563. MNUCHIN, SECRETARY OF THE TREASURY, ET AL. *v.* COLLINS ET AL. C. A. 5th Cir. [Certiorari granted, 591 U. S. 1028.] Motion of the Acting Solicitor General for enlargement of time for oral argument and for divided argument granted, and the time is allotted as follows: 35 minutes for the Acting Solicitor General, 15 minutes for the Court-appointed *amicus curiae*, and 40 minutes for Patrick Collins et al.

No. 19–508. AMG CAPITAL MANAGEMENT, LLC, ET AL. *v.* FEDERAL TRADE COMMISSION. C. A. 9th Cir. [Certiorari granted, 591 U. S. 1028.] Case no longer consolidated with No. 19–825, *Federal Trade Commission* v. *Credit Bureau Center, LLC.*

No. 19–511. FACEBOOK, INC. *v.* DUGUID ET AL. C. A. 9th Cir. [Certiorari granted, 591 U. S. 1028.] Motion of petitioner for divided argument granted.

No. 19–825. FEDERAL TRADE COMMISSION *v.* CREDIT BUREAU CENTER, LLC, ET AL. C. A. 7th Cir. [Certiorari granted, 591

U. S. 1028.] Case no longer consolidated with No. 19–508, *AMG Capital Management, LLC* v. *Federal Trade Commission*. The July 9, 2020, order granting the petition for writ of certiorari in this case is vacated. JUSTICE BARRETT took no part in the consideration of this order.

No. 19–1434. UNITED STATES *v.* ARTHREX, INC., ET AL.;

No. 19–1452. SMITH & NEPHEW, INC., ET AL. *v.* ARTHREX, INC., ET AL.; and

No. 19–1458. ARTHREX, INC. *v.* SMITH & NEPHEW, INC., ET AL. C. A. Fed. Cir. [Certiorari granted, 592 U. S. 1000.] Motion of the Acting Solicitor General to dispense with printing joint appendix granted.

No. 19–8860. IN RE ARUNACHALAM. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [592 U. S. 911] denied. THE CHIEF JUSTICE took no part in the consideration or decision of this motion.

No. 20–5118. DONAHUE *v.* PENNSYLVANIA. Super. Ct. Pa. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [592 U. S. 904] denied.

No. 20–6079. IN RE MCKENZIE. Petition for writ of habeas corpus denied.

No. 19–8766. IN RE WRIGHT. Petition for writ of habeas corpus denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 20–354. IN RE KILROY. Petition for writ of mandamus denied.

No. 19–8767. IN RE WRIGHT. Petition for writ of mandamus denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 20–5855. IN RE BENITEZ. Petition for writ of mandamus and/or prohibition denied.

No. 20–5889. IN RE ANAYA. Petition for writ of prohibition denied.

Certiorari Granted

No. 19–1442. CARR ET AL. *v.* SAUL, COMMISSIONER OF SOCIAL SECURITY. C. A. 10th Cir.; and

No. 20–105. DAVIS ET AL. *v.* SAUL, COMMISSIONER OF SOCIAL SECURITY; and HILLIARD *v.* SAUL, COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. Certiorari granted, cases consolidated, and a total of one hour is allotted for oral argument. Reported below: No. 19–1442, 961 F. 3d 1267; No. 20–105, 963 F. 3d 790 (frst judgment) and 964 F. 3d 759 (second judgment).

Certiorari Denied

No. 19–1398. LIEU, UNITED STATES CONGRESSMAN, ET AL. *v.* FEDERAL ELECTION COMMISSION. C. A. D. C. Cir. Certiorari denied.

No. 19–1475. DUKE UNIVERSITY *v.* BIOMARIN PHARMACEUTICAL INC. C. A. Fed. Cir. Certiorari denied. Reported below: 779 Fed. Appx. 750.

No. 19–8641. HANNA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 1. Certiorari denied.

No. 19–8889. GUAGUA-ALARCON *v.* UNITED STATES; and
No. 19–8910. CABEZAS-MONTANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 949 F. 3d 567.

No. 20–112. HERNANDEZ *v.* PNMAC MORTGAGE OPPORTUNITY FUND INVESTORS, LLC, ET AL. Ct. App. Cal., 2d App. Dist., Div. 5. Certiorari denied.

No. 20–187. CHUKWUANI *v.* SOLON CITY SCHOOL DISTRICT. C. A. 6th Cir. Certiorari denied.

No. 20–260. PERSONAL AUDIO, LLC *v.* CBS CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 946 F. 3d 1348.

No. 20–263. BLANCHARD-DAIGLE, REPRESENTATIVE OF THE ESTATE OF BLANCHARD *v.* GEERS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 113.

No. 20–267. BRAUNSTEIN *v.* BRAUNSTEIN. Sup. Ct. N. H. Certiorari denied. Reported below: 173 N. H. 38, 236 A. 3d 870.

No. 20–277. ADAMS ET AL. *v.* PARKER ET AL. C. A. 6th Cir. Certiorari denied.

No. 20–281. DAKER *v.* PERRY, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 648.

No. 20–288. ALCR, LLC *v.* SWAIN ET AL. Ct. App. Ariz. Certiorari denied. Reported below: 247 Ariz. 405, 450 P. 3d 270.

No. 20–289. RETIREMENT PLANS COMMITTEE OF IBM ET AL. *v.* JANDER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 962 F. 3d 85.

No. 20–336. KELLY ET AL. *v.* MOTIAYTIS. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 20–340. PERRIER-BILBO *v.* UNITED STATES ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 954 F. 3d 413.

No. 20–343. ESTATE OF MAURICE ET AL. *v.* LIFE INSURANCE COMPANY OF NORTH AMERICA. C. A. 9th Cir. Certiorari denied. Reported below: 792 Fed. Appx. 499.

No. 20–348. MERCER *v.* VEGA. C. A. 4th Cir. Certiorari denied. Reported below: 785 Fed. Appx. 119.

No. 20–369. VANA *v.* BARR, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 794 Fed. Appx. 156.

No. 20–417. BHARDWAJ *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 20–421. PROGRESSIVE LAWN MANAGERS, INC. *v.* LAWN MANAGERS, INC. C. A. 8th Cir. Certiorari denied. Reported below: 959 F. 3d 903.

No. 20–430. HENNING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 785 Fed. Appx. 430.

No. 20–436. HAUGABOOK *v.* BERY, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 20–446. RICHARDS *v.* BARRETT, SECRETARY OF THE AIR FORCE, ET AL. C. A. Armed Forces. Certiorari denied.

No. 20–455. CARPENTER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 801 Fed. Appx. 1.

No. 20–460. BOGGS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 795 Fed. Appx. 223.

No. 20–462. KAISER *v.* MORFITT, ASSISTANT UNITED STATES ATTORNEY. C. A. 8th Cir. Certiorari denied.

No. 20–487. Ho Wong Jeong *v.* Cabrera et al. C. A. 4th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 185.

No. 20–501. Shaffer, as Executrix of the Estate of Chuckrow *v.* Snyder, Commissioner, Massachusetts Department of Revenue. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 485 Mass. 198, 148 N. E. 3d 1197.

No. 20–5600. Harris *v.* Arizona et al. C. A. 9th Cir. Certiorari denied.

No. 20–5602. Farrington *v.* U. S. Bank Trust N. A., as Trustee for LSF9 Master Participation Trust, et al. C. A. 3d Cir. Certiorari denied. Reported below: 790 Fed. Appx. 490.

No. 20–5608. Besoyan *v.* Yee et al. C. A. 9th Cir. Certiorari denied.

No. 20–5616. Knotts *v.* West Virginia. Sup. Ct. App. W. Va. Certiorari denied.

No. 20–5626. Whitehead *v.* New Mexico. Dist. Ct. N. M., Eddy County. Certiorari denied.

No. 20–5627. Woodard *v.* New York. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 179 App. Div. 3d 1504, 119 N. Y. S. 3d 334.

No. 20–5631. Valley *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 20–5632. Shawn *v.* Eighth Judicial District Court of Nevada, Clark County. Sup. Ct. Nev. Certiorari denied. Reported below: 136 Nev. 876, 457 P. 3d 968.

No. 20–5633. Rowe *v.* Clarke, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 182.

No. 20–5634. Snow *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 20–5641. Turbi *v.* Inch, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 773.

No. 20–5642. WOOTEN *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 255.

No. 20–5675. TREVINO *v.* DOTSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 145.

No. 20–5678. LOGAN *v.* DEPARTMENT OF HOMELAND SECURITY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 838.

No. 20–5712. COLEMAN *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 963 F. 3d 429.

No. 20–5722. CARTER *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 20–5732. SEADIN *v.* WILLIAMS, DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 673.

No. 20–5736. MORAN *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 20–5765. BORDEN *v.* SWARTHOUT, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 20–5790. NGUEDI *v.* FEDERAL RESERVE BANK OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 813 Fed. Appx. 616.

No. 20–5803. BROWN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 225 A. 3d 1167.

No. 20–5833. FORTIER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 956 F. 3d 563.

No. 20–5836. DIGGLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 957 F. 3d 551.

No. 20–5841. NGUEDI *v.* FEDERAL RESERVE BANK OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 813 Fed. Appx. 616.

No. 20–5842. YANG MEI *v.* MAYOR AND CITY COUNCIL OF BALTIMORE. Cir. Ct. Baltimore City, Md. Certiorari denied.

No. 20–5844. SANTAMARIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 266.

No. 20–5850. AVERY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 279.

No. 20–5851. BADGETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 957 F. 3d 536.

No. 20–5853. ACOSTA-LEYVA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 855.

No. 20–5854. MULLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 819 Fed. Appx. 701.

No. 20–5857. BARRIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 124.

No. 20–5861. MITCHELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 20–5862. GOLDSTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 20–5864. NOE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–5865. DOE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 802 Fed. Appx. 655.

No. 20–5868. ACOSTA-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 854.

No. 20–5871. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 957 F. 3d 590.

No. 20–5872. SANCHEZ-CHACON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 785.

No. 20–5873. STAMPS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 871.

No. 20–5877. MORANCY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 432.

No. 20–5879. PHILLIPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 144.

No. 20–5880. DESHPANDE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 834.

No. 20–5881. LIRA-RAMIREZ *v.* UNITED STATES (Reported below: 951 F. 3d 1258); FERNANDEZ-CASAS *v.* UNITED STATES (806 Fed. Appx. 673); MARTINEZ *v.* UNITED STATES (804 Fed. Appx. 1010); HERNANDEZ-MENDEZ *v.* UNITED STATES (806 Fed. Appx. 674); and ROCHEL-CERVANTES *v.* UNITED STATES (806 Fed. Appx. 674). C. A. 10th Cir. Certiorari denied.

No. 20–5882. NINO-GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 861.

No. 20–5885. PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 315.

No. 20–5890. BENTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 957 F. 3d 696.

No. 20–5891. ALVAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 562.

No. 20–5894. NAVA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 957 F. 3d 581.

No. 20–5900. SELLERS ET AL. *v.* WYOMING ET AL. Sup. Ct. Wyo. Certiorari denied.

No. 20–5903. YOUNGER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 789.

No. 20–5905. JACKSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 20–5909. CONERLY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 790 Fed. Appx. 95.

No. 20–5910. COLEMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 167.

No. 20–5912. HENRY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 107.

No. 20–5913. COX *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 20–5918. LOCKE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–5925. MENDOZA-SANCHEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 963 F. 3d 158.

No. 20–5926. CANDIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 20–5928. ARCHER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 20–5929. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 870.

No. 20–5930. PALACIOS-VILLALON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 868.

No. 20–5933. GRIFFIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 811 Fed. Appx. 683.

No. 20–5936. CARTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 960 F. 3d 1007.

No. 20–5937. PAZOS CINGARI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 952 F. 3d 1301.

No. 20–5940. WEIGHTMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 896.

No. 20–5942. TRAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 20–5946. DARDEN *v.* VON BLANCKENSEE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 820.

No. 20–5947. SHULTS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 814 Fed. Appx. 296.

No. 20–5948. SEVIER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–5953. MCCOY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 223.

No. 20–5956. COPE *v.* LEE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 370.

No. 20–5957. CALDWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 963 F. 3d 1067.

No. 20–5960. HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 345.

No. 20–5961. GANT *v.* WILLIAMS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 754.

No. 20–5962. DIAZ-COLON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 20–5967. MAYVILLE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 955 F. 3d 825.

No. 20–5969. DINKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–5980. BRAWNER, AKA BARBER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 20–5983. FOLK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 954 F. 3d 597.

No. 20–5988. YAGHI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 795 Fed. Appx. 193.

No. 20–5995. GOMEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 287.

No. 20–5999. PORTER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 222 A. 3d 846.

No. 20–6003. ANDRE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 409.

No. 20–6006. WASHINGTON *v.* WILLETT, SUPERINTENDENT, MEHERRIN RIVER REGIONAL JAIL. C. A. 4th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 202.

No. 20–6007. WRIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 676.

No. 20–6009. THORNTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 397.

No. 20–86. DANIELS, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, ET AL. *v.* ROSS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 950 F. 3d 1160.

No. 20–285. CLARK *v.* BRAGGS, WARDEN. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 782 Fed. Appx. 741.

No. 20–307. MIRESKANDARI *v.* MAYNE ET AL. C. A. 9th Cir. Motion of Society of Black Lawyers for leave to file brief as

amicus curiae granted. Certiorari denied. Reported below: 800 Fed. Appx. 519.

No. 20–309. REARDON *v.* NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 20–5878. MURRAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 386.

JUSTICE SOTOMAYOR, respecting the denial of certiorari.

I concur for the reasons set out in *St. Hubert* v. *United States*, 590 U. S. 914 (2020) (SOTOMAYOR, J., statement respecting denial of certiorari).

Rehearing Denied

No. 19–1289. BENAVIDES *v.* BARR, ATTORNEY GENERAL, ET AL., 592 U. S. 921;

No. 19–1422. JACKSON *v.* BRUN, JUDGE, ET AL., 592 U. S. 921;

No. 19–5497. MCGILL *v.* UNITED STATES, 590 U. S. 945;

No. 19–7542. PELMEAR ET AL. *v.* O'CONNOR ET AL., 589 U. S. 1307; and

No. 20–32. MORSA *v.* IANCU, DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE, 592 U. S. 95. Petitions for rehearing denied.

No. 19–7266. STONE *v.* CENTENE CORP., 589 U. S. 1225. Motion for leave to file petition for rehearing denied.

NOVEMBER 10, 2020

Dismissal Under Rule 46

No. 20–355. ARCTIC CAT INC. *v.* BOMBARDIER RECREATIONAL PRODUCTS INC. ET AL. C. A. Fed. Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 950 F. 3d 860.

NOVEMBER 13, 2020

Certiorari Granted

No. 20–107. CEDAR POINT NURSERY ET AL. *v.* HASSID ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 923 F. 3d 524.

NOVEMBER 16, 2020

Certiorari Granted—Vacated and Remanded

No. 20–140. HEIDARI *v.* BARR, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Nasrallah* v. *Barr*, 590 U. S. 573 (2020). Reported below: 789 Fed. Appx. 444.

No. 20–5216. ANDERSON *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Davis* v. *United States*, 589 U. S. 345 (2020) (*per curiam*). Reported below: 795 Fed. Appx. 267.

Certiorari Dismissed

No. 20–5662. SAYED *v.* WILLIAMS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS. Ct. App. Colo. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 20–6062. AKERS *v.* UNITED STATES. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. JUSTICE KAGAN and JUSTICE GORSUCH took no part in the consideration or decision of this motion and this petition. Reported below: 807 Fed. Appx. 861.

Miscellaneous Orders

No. 20A70. VALENTINE ET AL. *v.* COLLIER, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Application to vacate stay, presented to JUSTICE ALITO, and by him referred to the Court, denied.

JUSTICE SOTOMAYOR, with whom JUSTICE KAGAN joins, dissenting.

I write again about the Wallace Pack Unit (Pack Unit), a geriatric prison in southeast Texas that has been ravaged by COVID–19. See *Valentine* v. *Collier*, 590 U. S. 935 (2020) (statement respecting denial of application to vacate stay). The Pack Unit is a "`tinderbox'" for COVID–19, not only because it is a dormitory-style facility, "making social distancing in the living quarters

impossible," but also because the vast majority of its inmates are at least 65 years old, and many suffer from chronic health conditions and disabilities. *Valentine* v. *Collier*, 455 F. Supp. 3d 308, 322, 325 (SD Tex. 2020). These inmates are some of the most vulnerable in the country to the current pandemic.

COVID–19 was frst detected in the Pack Unit in April 2020, after one inmate, Leonard Clerkly, contracted the virus and died. *Id.*, at 312. Since then, over 500 inmates have tested positive (more than 40% of the inmate population), and 19 more have died. See 490 F. Supp. 3d 1121, 1135, 1164 (SD Tex. 2020). The Pack Unit's 20 deaths account for 12% of all confr med and presumed deaths from COVID–19 in the entire Texas Department of Criminal Justice (TDCJ) prison system. See Tex. Dept. of Criminal Justice, COVID–19 Dashboard, https://www.tdcj.texas.gov/covid-19/mac_dashboard.html.

In July, the District Court held a weeks-long trial that revealed rampant failures by the prison to protect its inmates from COVID–19. In September, the District Court entered a permanent injunction requiring prison offcia ls to implement basic safety procedures. The Fifth Circuit, however, stayed the injunction pending appeal. Now, two inmates, Laddy Valentine and Richard King, ask this Court to vacate the stay. Because they have met their burden to justify such relief, I would grant the application.

I

Valentine and King are 69 and 73 years old, respectively. 490 F. Supp. 3d, at 1128. Already in a high-risk category due to their ages, both suffer from multiple health conditions that increase the likelihood of serious illness and death from COVID–19, including diabetes, hypertension, and kidney disease. *Ibid.* Earlier this year, Valentine and King sued the senior warden of the Pack Unit (Robert Herrera), the executive director of the TDCJ (Bryan Collier), and the TDCJ on behalf of a class of fellow inmates, alleging that prison offcia ls were violating the inmates' Eighth Amendment rights by failing to protect them adequately from COVID–19.[1]

Following an 18-day trial, the District Court made detailed f ndings of fact about the offcia ls' "consistent non-compliance with

[1] The inmates also raised claims under the Americans with Disabilities Act (ADA). Because the Eighth Amendment claims provide a suffcient basis to grant the requested relief, I do not address the ADA claims.

basic public health protocols" and failure "to take obvious precautionary public health measures upon which all medical professionals would agree." *Id.*, at 1167, 1168. The District Court's f ndings covered the gamut of essential precautions, including social distancing, mask wearing, proper cleaning and sanitization, testing, quarantining, and contact tracing. Prison staff, for example, regularly failed to wear masks, as documented in the prison's own educational video about COVID–19. *Id.*, at 1147–1148. The prison's communal showers were not cleaned between uses by different dorms, and disabled inmates had to sit shoulder to shoulder on benches while waiting for a disability-accessible shower to become available. *Id.*, at 1139, 1146. Inmates were responsible for cleaning the dorms during the outbreak, with no additional staff ng, training, or cleaning supplies. *Id.*, at 1143. This requirement was especially diffcu lt for Harold Dove, who is wheelchair-bound, legally blind, and paralyzed on the right side of his body. *Id.*, at 1145. He and others repeatedly notifed the prison that he was physically unable to clean his assigned dorm, but offcia ls continued to assign him cleaning duties for months, at the height of the outbreak. *Ibid.* One of the wardens later testifed that he was not concerned about assigning cleaning duties to disabled inmates because a disabled inmate "'could put a broom against his neck and push it with a wheelchair.'" *Id.*, at 1144–1145.

Based on the extensive trial record, the District Court entered a permanent injunction requiring the prison to establish and implement minimum safety protocols. These include "regular cleaning of common surfaces," "unrestricted access to hand soap," "wearing of [personal protective equipment (PPE)] among TDCJ staff," weekly testing, contact tracing, and quarantining inmates who are awaiting test results. *Id.*, at 1175. Some of these procedures are already required by statewide policy. See Electronic Case Filing in No. 4:20–cv–1115, Doc. 94–4 (SD Tex., May 13, 2020) (ECF).

The Fifth Circuit stayed the injunction pending appeal, concluding that respondents were likely to prevail because the inmates failed, before f ling suit, to seek relief through the prison's internal grievance process, as required by the Prison Litigation Reform Act (PLRA). See 978 F. 3d 154, 162 (2020). In the Fifth Circuit's view, it was "irrelevant" if that grievance process was "ineffective" or "'operated too slowly'" in light of the ongoing outbreak. *Ibid.* The court also concluded, notwithstanding the

District Court's f nding of systematic "shortcomings" at the Pack Unit, that the inmates' claims would likely fail on the merits because the prison's "actions were reasonable." *Id.*, at 163–164. Finally, the Fifth Circuit determined that, absent a stay, the injunction would irreparably harm prison offcia ls by interfering with their ability to manage the Pack Unit, and that the public interest favored a stay. *Id.*, at 165–166. This application followed.

II

The bar for vacating a stay is high. Among other things, the decision at issue must be "demonstrably wrong." *Western Airlines, Inc.* v. *Teamsters*, 480 U. S. 1301, 1305 (1987) (O'Connor, J., in chambers). When this Court ruled on the prior application in this case, challenging the Fifth Circuit's stay of the preliminary injunction, the limited evidentiary record made it diffcu lt to conclude that this stringent standard was met. Now, with the benef t of the District Court's detailed factf nding, no such diffcu lty remains. The Fifth Circuit demonstrably erred with respect to both the threshold issue of exhaustion under the PLRA and the merits of the inmates' Eighth Amendment claims.

A

Under the PLRA, inmates seeking to bring federal claims concerning prison conditions must frst exhaust "available" administrative remedies. 42 U. S. C. § 1997e(a). In *Ross* v. *Blake*, 578 U. S. 632 (2016), this Court held that remedies are not available, and thus exhaustion is not required, when "an administrative procedure . . . operates as a simple dead end—with offcers unable or consistently unwilling to provide any relief to aggrieved inmates." *Id.*, at 643. In other words, even if an internal process is "offcia lly on the books," it is not "`available' " if, as a practical matter, it "is not capable of use to obtain relief." *Ibid.*

That was the case here, as the District Court found. 490 F. Supp. 3d, at 1162–1163. The prison's grievance process is lengthy, beginning with mandatory informal dispute resolution and followed by up to 160 days of formal review. *Id.*, at 1154–1155. Remarkably, when this suit was f led, "COVID-related grievances were not treated differently from other types of grievances," despite inmates' attempts to designate them as emergencies. *Id.*, at 1155. Both Valentine and King f led grievances that remained pending for over two months during the outbreak. *Id.*, at 1162. By respondent Col-

lier's own admission, the prison's policy "`did not give adequate attention to the COVID–19 issue.'" 2020 WL 3491999, *6 (SD Tex., June 27, 2020).

Given the speed at which the contagion spread, the 160-day grievance process offered no realistic prospect of relief. In just 116 days, nearly 500 inmates contracted COVID–19, leading to 74 hospitalizations and 19 deaths. 490 F. Supp. 3d, at 1135. At least one inmate, Alvin Norris, died before the prison took any steps in response to his grievance. *Id.*, at 1162–1163. Both Valentine and another inmate, Gary Butaud, contracted COVID–19 while their grievances remained pending. *Id.*, at 1156.

The Fifth Circuit erred as a matter of law when it disregarded these findings by the District Court. The Fifth Circuit seized on language in *Ross* rejecting a judicially created exception to exhaustion for "`special circumstances,'" and concluded that "special circumstances—even threats posed by global pandemics—do not matter." 978 F. 3d, at 161 (citing 578 U. S., at 639). But the special-circumstances exception rejected in *Ross* applied when inmates failed to exhaust available remedies. See 578 U. S., at 637. In rejecting such an exception, this Court nonetheless recognized that the PLRA "contains its own, textual exception to mandatory exhaustion" that applies when remedies are not "available." *Id.*, at 642. Contrary to the Fifth Circuit's analysis, consideration of "the real-world workings of prison grievance systems" is central to assessing whether a process makes administrative remedies available. *Id.*, at 643. When this suit was filed, the Pack Unit's process plainly did not. As the District Court put it, the PLRA "cannot be understood as prohibiting judicial relief while inmates are dying." 490 F. Supp. 3d, at 1174, n. 13.

B

The Fifth Circuit's evaluation of the merits of the inmates' claims was also demonstrably wrong. To prove an Eighth Amendment claim for unconstitutional prison conditions, an inmate must show that he was exposed to an objective risk of serious harm and that prison officials subjectively acted with deliberate indifference to inmate health or safety. *Farmer* v. *Brennan*, 511 U. S. 825, 834 (1994). Deliberate indifference is a "state of mind" equivalent to "recklessly disregarding" a known and substantial risk. *Id.*, at 835–836. Prison officials thus may not "ignore a condition of confinement that is sure or very likely to

cause serious illness and needless suffering." *Helling* v. *McKinney*, 509 U. S. 25, 33 (1993).

Here, the dangers of COVID–19 to these especially vulnerable inmates were undisputed and, indeed, "indisputable." 490 F. Supp. 3d, at 1164. The District Court frst found that respondents were subjectively aware of those risks because they were obvious. *Id.*, at 1165 (citing *Farmer*, 511 U. S., at 842). Then, weighing the evidence and "competing narratives" presented by the parties at trial, the court concluded that the offcials' conduct, communications, and omissions refected deliberate indifference. 490 F. Supp. 3d, at 1165, 1166.

Each of these factual fndings must be reviewed deferentially under the clear-error standard. See *Glossip* v. *Gross*, 576 U. S. 863, 881 (2015); *Ball* v. *LeBlanc*, 792 F. 3d 584, 592 (CA5 2015). "Where there are two permissible views of the evidence, the factfnder's choice between them cannot be clearly erroneous." *Anderson* v. *Bessemer City*, 470 U. S. 564, 574 (1985). "If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that . . . it would have weighed the evidence differently." *Id.*, at 573–574.

Here, the District Court's assessment of the evidence was not only permissible, but fully supported. The District Court cited specifc evidence that respondents knew not only of the dangers of COVID–19, but also of the dangers specifcally created by their inadequate response to the outbreak. For example, respondent Collier received a text message on April 26, 2020, informing him of the dangers of the prison's policy of removing infected inmates from quarantine after 14 days, without confrming a negative test frst: "FYI One of our frst positives is still testing positive and shedding virus at 21 days. The state['s] 14 day isolation with no retesting is questionable at best." 490 F. Supp. 3d, at 1152. Yet inmates who had contracted COVID–19 testifed that, following the 14-day period, they were "neither medically examined by a doctor [n]or retested for COVID–19 before returning to negative dorms." *Ibid.* One inmate, Roger Beal, informed medical and security staff that he should not be transferred after his 14-day period ended because he was still symptomatic; he even fled a formal grievance warning that he posed a risk to other inmates. *Ibid.* Nonetheless, Beal was transferred to a dorm for uninfected

inmates after the minimum quarantine period ended, despite his continuing symptoms. *Ibid.*

Rather than contending with these facts, the Fifth Circuit sidestepped the clear-error standard by claiming that its review was not "fact-specifc." 978 F. 3d, at 165. But the Fifth Circuit's analysis makes clear that it substituted its own view of the facts for that of the District Court. For instance, in highlighting the prison's policy requiring masks and social distancing, the Fifth Circuit chose to ignore the District Court's express f nding that "staff non-compliance with regard to wearing PPE and social distancing were regular, daily features of life in the Pack Unit." 490 F. Supp. 3d, at 1167. Similarly, the Fifth Circuit gave special weight to the prison's testing efforts, while disregarding the critical faws identifed by the District Court. To start, no mass testing occurred until about a month after the prison's frst casualty. *Id.*, at 1168. Even then, inmates had to wait one to two weeks to get their results, which, according to the prison's own experts, was "simply too long to effectively contain the spread of the virus." *Ibid.* Respondents knew of tests with shorter turnaround times but never explored the possibility of using them. *Ibid.* Perhaps most troublingly, the prison continued to house inmates diagnosed with COVID–19 together with inmates who tested negative—a failure that respondents obscured by "misrepresent[ing] certain facts" to the District Court. *Id.*, at 1134, 1152. In short, far from "dispell[ing]" an inference of deliberate indifference, the prison's actions highlighted by the Fifth Circuit only confr m it. See 978 F. 3d, at 164.

At bottom, the Fifth Circuit rejected the District Court's careful analysis of subjective deliberate indifference based on the Fifth Circuit's view that respondents took reasonable "affr mative steps" to respond to the virus. *Ibid.* But merely taking affr mative steps is not suffcient when offcia ls know that those steps are sorely inadequate and leave inmates exposed to substantial risks. That was the case here: The District Court found that respondents "were well aware of the shortcomings" in their response "and nevertheless chose to stay the course, even after a number of inmates died." 490 F. Supp. 3d, at 1167. Respondent Collier even admitted that prison offcia ls "`were not doing everything [they] should have been . . . . Thin[g]s like restricting, isolating, PPE access, cleaning supplies.'" *Id.*, at 1154. To be sure,

the "Eighth Amendment does not mandate perfect implementation," 978 F. 3d, at 165, but it also does not set a bar so low that any response by offcia ls will satisfy it. Given the evidence in the record, there is no basis to overturn the District Court's f nding of deliberate indifference.

III

The Fifth Circuit's decision creates a risk of serious and irreparable harm to the inmates that far outweighs any risk of harm to respondents. See *Western Airlines*, 480 U. S., at 1305. The Fifth Circuit concluded that "a stay will not substantially harm" the inmates because the number of positive cases in the Pack Unit "has been drastically reduced." 978 F. 3d, at 166. It is true that, after a months-long outbreak that claimed 20 lives and infected over 40% of the Pack Unit's inmate population, the number of active positive cases has fallen. But the threat of a second outbreak is "ongoing." 490 F. Supp. 3d, at 1172. On the same day that respondents represented to this Court that active cases had reached zero, the prison reported three active cases among prison employees and one among inmates. See Reply Brief 2.

As the last outbreak demonstrated, COVID–19 can overtake a prison in a matter of weeks. On May 9, the Pack Unit reported 8 positive cases; in less than three weeks, there were over 200 cases, 5 deaths, and 12 hospitalizations. See 490 F. Supp. 3d, at 1134–1135. Oral argument before the Fifth Circuit is weeks away, with a decision on the merits even further. If the injunction's safety measures are not implemented and maintained, this "relentless pandemic" may again engulf the Pack Unit. *Id.*, at 1172.

On the other hand, respondents make only a generalized claim that the injunction interferes with their ability to manage the Pack Unit. They fail to explain how any particular measure does so. See Brief in Opposition 27–29.[2] The permanent injunction

[2] In addressing the merits of the inmates' ADA claims, respondents argue that they cannot comply with the permanent injunction's requirement that mobility-impaired inmates be given access to hand sanitizer. See 490 F. Supp. 3d, at 1175. Hand sanitizer is an essential alternative to handwashing for these inmates because "[i]n traveling to and from the sink to wash their hands with soap and water, wheelchair-bound inmates must touch the tires of their wheelchairs, which may track dirt, urine, fecal matter, or germs from the foor." *Id.*, at 1142. Respondents claim that hand sanitizer cannot be safely provided to these inmates because of the risk of "`misuse.'" Brief

imposes only basic safety measures using reasonable, fexible terms, such as the "regular cleaning of common surfaces with bleach-based cleaning agents," the "wearing of PPE among TDCJ staff," "weekly testing," and "contact tracing." 490 F. Supp. 3d, at 1142. Respondents have admitted that some of these measures are "medically necessary" and required by statewide policy, and they claim that they have voluntarily implemented nearly all of them.[3] *Id.*, at 1147, 1151, 1174; Brief in Opposition 28. Respondents also presented no evidence of "budgetary or f nancial concerns" with the measures required by the injunction. 490 F. Supp. 3d, at 1173–1174. They therefore fail to demonstrate that they will suffer any harm from the injunction. If circumstances change and respondents are able to show that a modifcati on of the injunction is warranted, the District Court has offered to hear any such motion on 24 hours' notice. See ECF Doc. 422, p. 2.

* * *

The people incarcerated in the Pack Unit are some of our most vulnerable citizens. They face severe risks of serious illness and death from COVID–19, but are unable to take even the most basic precautions against the virus on their own. If the prison fails to enforce social distancing and mask wearing, perform regular testing, and take other essential steps, the inmates can do nothing but wait for the virus to take its toll. Twenty lives have been

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in Opposition 26. But "TDCJ did not perform an analysis to determine whether hand sanitizer could be provided to wheelchair-bound inmates at Pack Unit." 490 F. Supp. 3d, at 1142. At least one other TDCJ facility has found a safe way for inmates to handle hand sanitizer, even requiring them to rebottle it for use by TDCJ staff. *Id.*, at 1143. Respondent Collier himself stated, "[I]f we need to [provide hand sanitizer to inmates] we know we can fg ure it out." *Ibid.* Respondents simply chose not to.

[3] Respondents' claim of compliance with the injunction underscores how feasible and modest its measures are. Their claim does not, however, make the injunction unnecessary. See Brief in Opposition 28. Like the District Court, I do "not have confdence that, without an injunction in place, TDCJ will continue to carry out policies that are appropriate to safeguard inmates' health and safety." 490 F. Supp. 3d, at 1172. They previously claimed that they had substantially complied with the terms of the preliminary injunction, only for the truth to be exposed at trial. See 960 F. 3d 707 (CA5 2020) (*per curiam*). If respondents truly intend to remain in compliance with the permanent injunction, it is unclear why they are fghti ng so hard to overturn it.

lost already. I fear the stay will lead to further, needless suffering.

Importantly, nothing in the Court's decision today prevents Valentine and King from returning to this Court if it becomes clear that the risks they face as a result of respondents' conduct are even graver than they already appear. Because I would not force them to wait until it may be too late, I respectfully dissent.

No. 20M37. CONE *v.* FLORIDA. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 19–8480. CATERBONE *v.* NATIONAL SECURITY AGENCY. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [592 U. S. 902] denied.

No. 20–5308. HORTON *v.* METHODIST UNIVERSITY, INC. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 7, 2020, within which to pay the docketing fee required by this Court's Rule 38(a).

No. 20–5693. IN RE DIZZLEY;
No. 20–5702. IN RE OSORNIO; and
No. 20–5808. IN RE LIVERMAN. Petitions for writs of mandamus denied.

No. 20–5705. IN RE SATTERFIELD. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8.

No. 20–5677. IN RE WREN; and
No. 20–5815. IN RE WILCOX. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Denied

No. 19–1437. VETCHER *v.* BARR, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 953 F. 3d 361.

No. 20–11. ALEXIS *v.* BARR, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 960 F. 3d 722.

No. 20–126. ANDALUSIAN GLOBAL DESIGNATED ACTIVITY CO. ET AL. *v.* FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR

PUERTO RICO ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 948 F. 3d 457.

No. 20–128. BIG PORT SERVICE DMCC *v.* CHINA SHIPPING CONTAINER LINES CO. LTD. C. A. 2d Cir. Certiorari denied. Reported below: 803 Fed. Appx. 481.

No. 20–134. HERNANDEZ ET AL. *v.* BOLES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 949 F. 3d 251.

No. 20–300. CLARK *v.* CLARK. Ct. App. Wash. Certiorari denied. Reported below: 11 Wash. App. 2d 1070.

No. 20–310. KEACH, ESTATE REPRESENTATIVE OF POST-EFFECTIVE DATE ESTATE OF MONTREAL, MAINE, AND ATLANTIC RAILWAY, LTD. *v.* NEW BRUNSWICK SOUTHERN RAILWAY CO., LTD., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 953 F. 3d 29.

No. 20–312. TEXAS BRINE CO., LLC, ET AL. *v.* NAQUIN, CLERK, COURT OF APPEAL OF LOUISIANA, FIRST CIRCUIT. Sup. Ct. La. Certiorari denied.

No. 20–324. BARCLAY *v.* OREGON DEPARTMENT OF JUSTICE ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–325. WHITSERVE LLC *v.* DONUTS INC. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 809 Fed. Appx. 929.

No. 20–337. LYNN *v.* BROWN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 156.

No. 20–344. MYERS *v.* MYERS ET AL. App. Ct. Mass. Certiorari denied. Reported below: 96 Mass. App. 1106, 137 N. E. 3d 1086.

No. 20–349. PARDES *v.* WIENICK ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 20–352. PAINE COLLEGE *v.* SOUTHERN ASSOCIATION OF COLLEGES AND SCHOOLS COMMISSION ON COLLEGES, INC. C. A. 11th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 852.

No. 20–353. J. H., BY CONSERVATOR, HARRIS *v.* WILLIAMSON COUNTY, TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 951 F. 3d 709.

No. 20–359. PISZTORA ET AL. *v.* CITY OF PITTSBURGH, PENNSYLVANIA, ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 220 A. 3d 1207.

No. 20–395. ROTE *v.* ZWEIZIG. C. A. 9th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 645.

No. 20–406. MARROQUIN-PEREZ *v.* BARR, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 20–416. CALDARA ET AL. *v.* CITY OF BOULDER, COLORADO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 955 F. 3d 1175.

No. 20–424. IYM TECHNOLOGIES LLC *v.* RPX CORP. ET AL. (two judgments). C. A. Fed. Cir. Certiorari denied. Reported below: 796 Fed. Appx. 752 (frst judgment); 798 Fed. Appx. 642 (second judgment).

No. 20–431. CORRIGAN *v.* GRANT COUNTY, WASHINGTON, ET AL. Ct. App. Wash. Certiorari denied. Reported below: 11 Wash. App. 2d 1034.

No. 20–469. LINDAUER ET AL. *v.* ELNA SEFCOVIC, LLC, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 953 F. 3d 660.

No. 20–484. WOODS *v.* STORMS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 542.

No. 20–492. GONZALEZ ET AL. *v.* ELNA SEFCOVIC, LLC, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 752.

No. 20–497. AZEEZ *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 20–500. MADDEN *v.* BRENNAN, POSTMASTER GENERAL. C. A. 6th Cir. Certiorari denied.

No. 20–513. FUECHTENER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 20–514. SADJADI ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 997.

No. 20–5296. A. I. *v.* M. A. Super. Ct. N. J., App. Div. Certiorari denied.

No. 20–5303. DIBBLE *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 159 Ohio St. 3d 322, 2020-Ohio-546, 150 N. E. 3d 912.

No. 20–5621. SIMMONS-BEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 172.

No. 20–5657. SCOTT *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 20–5663. BUONAIUTO *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 222 A. 3d 849.

No. 20–5664. HANSERD *v.* TRIERWEILER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5665. GANN *v.* ALLISON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 283.

No. 20–5667. TENAGLIA-EVANS *v.* EVANS. Sup. Ct. Del. Certiorari denied. Reported below: 225 A. 3d 1266.

No. 20–5680. STEELE *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 20–5683. SMITH *v.* HALL, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 20–5684. SCHWINDLER *v.* HATCHER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 20–5696. GRANDBERRY *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 20–5697. HARRIS *v.* SMITH. Ct. App. Tenn. Certiorari denied.

No. 20–5701. NARAYAN *v.* PRASAD. Sup. Ct. Cal. Certiorari denied.

No. 20–5703. MILLER *v.* PHILLIPS ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–5713. BAPTICHON *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 811 Fed. Appx. 2.

No. 20–5723. CALHOUN *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 20–5724. JOHNSON *v.* GIBSON, JUDGE, ET AL. C. A. 6th Cir. Certiorari denied.

No. 20–5725. LOTT *v.* OSEGUERA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 883.

No. 20–5734. FLORES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 9 Cal. 5th 371, 462 P. 3d 919.

No. 20–5735. PERRY *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 20–5750. STAPLES *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 20–5760. FREDERICKSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 8 Cal. 5th 963, 457 P. 3d 1.

No. 20–5763. AKASSY *v.* BARR, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 788 Fed. Appx. 75.

No. 20–5782. WARREN *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 146 N. E. 3d 972.

No. 20–5797. MURRAY *v.* RHODE ISLAND. Sup. Ct. R. I. Certiorari denied. Reported below: 216 A. 3d 1234.

No. 20–5800. ROSE *v.* GUYER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 961 F. 3d 1238.

No. 20–5802. SAUNDERS *v.* RAYBON, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 343.

No. 20–5822. SPEARS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 429 S. C. 422, 839 S. E. 2d 450.

No. 20–5847. HARTZ *v.* WASHINGTON DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 20–5848. GUSTAFSON *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 300 Ore. App. 438, 452 P. 3d 962.

No. 20–5866. DICKEN *v.* BREWER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5869. EVERETT *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 164 So. 3d 747.

No. 20–5914. ROBINSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 21.

No. 20–5951. RICHARDS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 958 F. 3d 961.

No. 20–5952. MURACA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 803 Fed. Appx. 545.

No. 20–5958. FIELDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 251.

No. 20–5976. REYNOLDS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 185.

No. 20–5977. ATKINS *v.* BROWN ET AL. C. A. 7th Cir. Certiorari denied.

No. 20–5991. REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 963 F. 3d 482.

No. 20–5992. HICKS *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 20–6004. ALONSO-TOBAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 288.

No. 20–6005. BRANCACCIO *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 300 So. 3d 1185.

No. 20–6022. BRUTEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 814 Fed. Appx. 486.

No. 20–6029. TIEMPO-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 158.

No. 20–6030. WYATT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 908.

No. 20–6034. THIEME *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 20–6041. PERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 20–6042. BAILEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 298.

No. 20–6044. BENJAMIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 827 Fed. Appx. 30.

No. 20–6047. SHABAZZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 919.

No. 20–6051. ORTIZ-TORRES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 20–6052. CONWAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 20–6055. WEATHERSPOON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 231.

No. 20–6057. EMMERT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–6058. MOORE, AKA KITTRELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–6067. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 20–6070. GILMORE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 997.

No. 20–6087. LAWRENCE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 19–1362. LAUT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 790 Fed. Appx. 45.

No. 20–166. ANGLESEY ET AL. *v.* ALLIED PROFESSIONALS INSURANCE CO., A RISK RETENTION GROUP, INC. C. A. 9th Cir. Motion of National Risk Retention Association for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 952 F. 3d 1131.

No. 20–316. PAPPAS, COOK COUNTY TREASURER, ET AL. *v.* A. F. MOORE & ASSOCIATES, INC., ET AL.; and

No. 20–357. KAEGI *v.* A. F. MOORE & ASSOCIATES, INC., ET AL. C. A. 7th Cir. Motions of Illinois Association of School Boards et al. for leave to file brief as *amici curiae* granted. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of these motions and these petitions. Reported below: 948 F. 3d 889.

No. 20–5830. CHRISTIAN *v.* THOMAS, WARDEN. C. A. 9th Cir. Certiorari before judgment denied.

Rehearing Denied

No. 19–1326. SCARBOROUGH *v.* COURT OF COMMON PLEAS OF PENNSYLVANIA, NORTHAMPTON COUNTY, ET AL., 592 U. S. 916;

No. 19–1335. DUMMER *v.* CALIFORNIA CONTRACTORS STATE LICENSE BOARD ET AL., 592 U. S. 917;

No. 19–8476. YERTON *v.* OKLAHOMA, 592 U. S. 928;

No. 19–8607. THOMPSON *v.* GRIFFIN, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY, 592 U. S. 932; and

No. 20–5135. BOWELL *v.* STATE BAR OF CALIFORNIA, 592 U. S. 964. Petitions for rehearing denied.

No. 19–7736. WOODS *v.* WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY ET AL., 590 U. S. 910. Motion for leave to file petition for rehearing denied.

NOVEMBER 19, 2020

Miscellaneous Orders

No. 20A99. HALL ET AL. *v.* BARR, ATTORNEY GENERAL, ET AL. Application for stay of execution of sentences of death for Orlando Hall and Brandon Bernard, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

No. 20A102. BARR, ATTORNEY GENERAL, ET AL. *v.* HALL. Application to vacate stay of execution, presented to THE CHIEF JUSTICE, and by him referred to the Court, granted, and the injunction entered by the District Court for the District of Columbia on November 19, 2020, is vacated. JUSTICE BREYER, JUSTICE SOTOMAYOR, and JUSTICE KAGAN would deny the application.

Certiorari Denied

No. 20–688 (20A100). HALL *v.* BARR, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Application for stay of execution of

sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. Reported below: 830 Fed. Appx. 8.

No. 20–697 (20A101). HALL *v.* WATSON, WARDEN. C. A. 7th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KAVANAUGH, and by him referred to the Court, denied. Certiorari denied. Reported below: 829 Fed. Appx. 721.

NOVEMBER 20, 2020

*Miscellaneous Orders**

No. 19–1328. DEPARTMENT OF JUSTICE *v.* HOUSE COMMITTEE ON THE JUDICIARY. C. A. D. C. Cir. [Certiorari granted, 591 U. S. 1025.] Motion of respondent to remove the case from the December 2020 argument calendar granted.

No. 20–366. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* NEW YORK ET AL. S. D. N. Y. [Probable jurisdiction postponed, 592 U. S. 1022.] Joint motion of appellees for enlargement of time for oral argument and for divided argument granted, and the time is allotted as follows: 40 minutes for the Acting Solicitor General, 20 minutes for government appellees, and 20 minutes for private appellees.

Certiorari Granted

No. 20–157. CANIGLIA *v.* STROM ET AL. C. A. 1st Cir. Certiorari granted. Reported below: 953 F. 3d 112.

No. 19–1414. UNITED STATES *v.* COOLEY. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 919 F. 3d 1135.

NOVEMBER 23, 2020

Miscellaneous Orders

No. 20M38. LANCASTER *v.* CITY OF LOS ANGELES, CALIFORNIA, ET AL. Motion to direct the Clerk to file petition for writs of certiorari out of time denied.

No. 20M39. TREANTOS *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

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*For the Court's order making allotment of Justices, see 592 U. S. IV.

No. 20M40. JOHNSON *v.* WILSON, WARDEN. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 20M41. HOOKER *v.* ILLINOIS. Motion for leave to proceed as a veteran denied.

No. 20M42. SMITH, AKA SMITH-WEEKS *v.* UNITED STATES PAROLE COMMISSION. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for fees and expenses granted, and the River Master is awarded a total of $6,411.02, for the period July 1, 2019, through June 30, 2020, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 592 U. S. 1072.]

No. 19–8383. SORO *v.* LOPEZ. Dist. Ct. App. Fla., 3d Dist. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [592 U. S. 901] denied.

No. 20–18. LANGE *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist., Div. 5. [Certiorari granted, 592 U. S. 1024.] Motion of petitioner to dispense with printing joint appendix granted.

No. 20–6173. IN RE TELFAIR. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

No. 20–5820. IN RE MATHIS. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 19–1273. ASSASSINATION ARCHIVES AND RESEARCH CENTER *v.* CENTRAL INTELLIGENCE AGENCY. C. A. D. C. Cir. Certiorari denied. Reported below: 781 Fed. Appx. 11.

No. 19–1293. LUDWIKOWSKI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 944 F. 3d 123.

No. 19–1315. NEVADA ET AL. *v.* WALDEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 945 F. 3d 1088.

No. 19–1365. HUESO *v.* BARNHART, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 948 F. 3d 324.

No. 19–1368. WALMART STORES, INC., ET AL. *v.* TEXAS ALCOHOLIC BEVERAGE COMMISSION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 945 F. 3d 206.

No. 19–1453. MICHIGAN *v.* FULLER. Ct. App. Mich. Certiorari denied.

No. 19–8657. JHA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 19–8733. GASPAR-MIGUEL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 947 F. 3d 632.

No. 19–8807. CEAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 771 Fed. Appx. 81.

No. 20–19. JACKSON *v.* BRAITHWAITE, SECRETARY OF THE NAVY. C. A. D. C. Cir. Certiorari denied. Reported below: 949 F. 3d 763.

No. 20–190. SOHN ET UX. *v.* MARIPOSA COUNTY, CALIFORNIA, ET AL. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 20–193. MCMILLAN *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 290 So. 3d 17.

No. 20–278. SMITH *v.* WILKIE, SECRETARY OF VETERANS AFFAIRS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 852.

No. 20–364. WILKINS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA. C. A. Fed. Cir. Certiorari denied. Reported below: 817 Fed. Appx. 1020.

No. 20–367. BARAN *v.* ASRC FEDERAL MISSION SOLUTIONS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 815 Fed. Appx. 633.

No. 20–385. DOE *v.* PARSON, GOVERNOR OF MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 960 F. 3d 1115.

No. 20–386. GILBERTI *v.* FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 20–399. JUNG HYUN CHO ET AL. *v.* SELECT PORTFOLIO SERVICING, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 230.

No. 20–425. NASTASE *v.* BARR, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 964 F. 3d 313.

No. 20–432. S. O. ET AL. *v.* DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied. Reported below: 221 A. 3d 108.

No. 20–434. HEINRICH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 38.

No. 20–453. CONSUMER 2.0, INC., DBA RENTLY *v.* TENANT TURNER, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 796 Fed. Appx. 752.

No. 20–466. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 164.

No. 20–558. ADAMS *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 276.

No. 20–573. KERVEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 792 Fed. Appx. 900.

No. 20–5180. FRAWLEY *v.* FRAWLEY. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 597 S. W. 3d 742.

No. 20–5366. SMITH *v.* DAVIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 953 F. 3d 582.

No. 20–5563. BAYS *v.* SHOOP, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 481.

No. 20–5617. RUNDLE *v.* DAVIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 782 Fed. Appx. 581.

No. 20–5777. BANKS *v.* TERRY ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–5780. D. W. *v.* California. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 20–5788. Wilkins *v.* Washington. Ct. App. Wash. Certiorari denied. Reported below: 10 Wash. App. 2d 1045.

No. 20–5789. Nguedi *v.* Caulfield et al. C. A. 2d Cir. Certiorari denied. Reported below: 813 Fed. Appx. 1.

No. 20–5804. Burghart *v.* Beyer. C. A. 4th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 787.

No. 20–5807. Graham *v.* Perry, Warden, et al. Sup. Ct. Ga. Certiorari denied.

No. 20–5814. Webb *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 915.

No. 20–5819. Jones *v.* Texas. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 600 S. W. 3d 94.

No. 20–5834. Garcia-Chicol *v.* Arkansas. Sup. Ct. Ark. Certiorari denied. Reported below: 2020 Ark. 148, 597 S. W. 3d 631.

No. 20–5835. Garcia *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 20–5839. McCall *v.* Hillis. Sup. Ct. Tex. Certiorari denied. Reported below: 602 S. W. 3d 436.

No. 20–5843. Brown *v.* Wisconsin. Sup. Ct. Wis. Certiorari denied. Reported below: 2020 WI 63, 392 Wis. 2d 454, 945 N. W. 2d 584.

No. 20–5870. Clark *v.* Vannoy, Warden. C. A. 5th Cir. Certiorari denied.

No. 20–5875. Marsh *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 739.

No. 20–5915. Cortese *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 780.

No. 20–5927. Diulio *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 20–5943. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 806.

No. 20–5970. LITTLE *v.* DISTRICT OF COLUMBIA PUBLIC SCHOOLS ET AL. Ct. App. D. C. Certiorari denied.

No. 20–5978. BLALOCK *v.* ALASKA. Ct. App. Alaska. Certiorari denied. Reported below: 452 P. 3d 675.

No. 20–5984. WOODS *v.* COOK, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 960 F. 3d 295.

No. 20–5985. CRUMPTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 814 Fed. Appx. 964.

No. 20–6018. WIN MIN HTUT *v.* CAPOZZA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 20–6020. BAZZI *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 505 Mich. 1066, 943 N. W. 2d 90.

No. 20–6033. BARNES *v.* FEDELE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 813 Fed. Appx. 696.

No. 20–6037. WILLIARD *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2019 IL App (1st) 152651–U.

No. 20–6065. REINHEIMER *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 826 Fed. Appx. 815.

No. 20–6112. PENA TRUJILLO *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied.

No. 20–6117. WASANYI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 20–6118. WALL *v.* HAINSWORTH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT LAUREL HIGHLANDS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 19–1225. HUNT *v.* BOARD OF REGENTS OF THE UNIVERSITY OF NEW MEXICO ET AL. C. A. 10th Cir. Motions of Speech First, Southeastern Legal Foundation, First Amendment Scholars, and Joseph L. Brechner Center for Freedom of Information et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 792 Fed. Appx. 595.

No. 19–8741. ANKENY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 798 Fed. Appx. 990.

No. 20–14. CONGREGATION RABBINICAL COLLEGE OF TARTIKOV, INC., ET AL. *v.* VILLAGE OF POMONA, NEW YORK, ET AL. C. A. 2d Cir. Motion of National Jewish Commission on Law and Public Affairs et al. for leave to file brief as *amici curiae* granted. Certiorari denied.

No. 20–254. KUANG-BAO OU-YOUNG *v.* ROBERTS, CHIEF JUSTICE, SUPREME COURT OF THE UNITED STATES, ET AL. C. A. 4th Cir. Certiorari denied. THE CHIEF JUSTICE, JUSTICE BREYER, and JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 797 Fed. Appx. 112.

No. 20–435. CAMPBELL *v.* MCCARTHY, SECRETARY OF THE ARMY. C. A. 4th Cir. Motion of National Security Legal Academics for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 952 F. 3d 193.

No. 20–5155. COUGHLIN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition.

Rehearing Denied

No. 19–1319. MORABITO ET UX. *v.* NEW YORK ET AL., 592 U. S. 916;

No. 19–1354. TAN PHAN *v.* MINH VAN TRUONG ET AL., 592 U. S. 918;

No. 19–1355. JERNIGAN *v.* WILKIE, SECRETARY OF VETERANS AFFAIRS, 592 U. S. 918;

No. 19–1426. PECINA *v.* WILKIE, SECRETARY OF VETERANS AFFAIRS, 592 U. S. 921;

No. 19–8652. SANCHEZ *v.* REAL, JUDGE, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, ET AL., 592 U. S. 935;

No. 19–8685. IN RE FAIRCHILD-LITTLEFIELD, 592 U. S. 910;

No. 19–8687. GHAZAVI *v.* VIRGINIA, 592 U. S. 937;

No. 20–110. KANNRY ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE, 592 U. S. 954; and

No. 20–173. HEFFLIN ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE, 592 U. S. 956. Petitions for rehearing denied.

No. 20–5094. LAUX *v.* MENTOR WORLDWIDE, LLC, 592 U. S. 986. Petition for rehearing denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 20–5295. ATKINS *v.* SAUL, COMMISSIONER OF SOCIAL SECURITY, 592 U. S. 1005. Petition for rehearing denied. JUSTICE BARRETT took no part in the consideration or decision of this petition.

NOVEMBER 25, 2020

Miscellaneous Order

No. 20A90. AGUDATH ISRAEL OF AMERICA ET AL. *v.* CUOMO, GOVERNOR OF NEW YORK. C. A. 2d Cir. Application for injunctive relief, presented to JUSTICE BREYER, and by him referred to the Court, granted in part. Respondent enjoined from enforcing Executive Order 202.68's 10- and 25-person occupancy limits on applicants, including Agudath Israel of America's current New York-based affiliates, pending disposition of the appeal in the United States Court of Appeals for the Second Circuit and disposition of the petition for writ of certiorari, if such writ is timely sought. Should the petition for writ of certiorari be denied, this order shall terminate automatically. In the event the petition for writ of certiorari is granted, the order shall terminate upon the sending down of the judgment of this Court.

CHIEF JUSTICE ROBERTS, dissenting.

I dissent for the reasons set out in *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 592 U. S. 14 (2020) (ROBERTS, C. J., dissenting from grant of application for injunctive relief).

JUSTICE BREYER, with whom JUSTICE SOTOMAYOR and JUSTICE KAGAN join, dissenting.

I dissent for the reasons set out in *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 592 U. S. 14 (2020) (BREYER, J., dissenting from grant of application for injunctive relief).

JUSTICE SOTOMAYOR, with whom JUSTICE KAGAN joins, dissenting.

I dissent for the reasons set out in *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 592 U. S. 14 (2020) (SOTOMAYOR, J., dissenting from grant of application for injunctive relief).

DECEMBER 2, 2020

Dismissal Under Rule 46

No. 20–8. DEUTSCHE BANK TRUST COMPANY AMERICAS ET AL. *v.* ROBERT R. MCCORMICK FOUNDATION ET AL. C. A. 2d Cir. Certiorari dismissed as to respondents AQR Absolute Return Master Account, LP; AQR Global Stock Selection HV Master Account Ltd.; AQR Global Stock Selection Master Account, LP; Columbia Management Group, [nka Bofa Global Capital Management Group, LLC]; Conservative Balanced Portfolio a Series of Prudential Series Fnd Inc.; Loomis Sayles Credit Alpha Fund; Prudential Bache Securities, LLC [Jefferies Bache Securities, LLC, fka Prudential Bache Securities, LLC]; Prudential Insurance Co. of America (PDI); Prudential Insurance Co. of America (PMFIM) [PICA––Prudential Insurance Company Separate Account]; Prudential Insurance Company of America; Prudential Investment Management Inc.; Prudential Investment Portfolio 3—Prudential Strategic Value Fund; Prudential Investment Portfolios 8—Prudential Stock Index Fund; Prudential Investments, Inc.; Prudential Non-Qualifed Benefts Funding (TOLI); Prudential Retirement Insurance and Annuity Co.; Prudential Retirement SA LV5; Stock Index Portfolio, a Series of the Prudential Series Fund, Inc.; and T. Rowe Price Group, Inc., under this Court's Rule 46. Reported below: 946 F. 3d 66.

DECEMBER 3, 2020

Dismissal Under Rule 46

No. 20–273. COMCAST CABLE COMMUNICATIONS, LLC *v.* ROVI GUIDES, INC., ET AL. C. A. Fed. Cir. Certiorari dismissed under this Court's Rule 46.

Miscellaneous Order

No. 20A94. HARVEST ROCK CHURCH, INC., ET AL. *v.* NEWSOM, GOVERNOR OF CALIFORNIA. Application for injunctive relief, presented to JUSTICE KAGAN, and by her referred to the Court, treated as a petition for writ of certiorari before judgment, and the petition is granted. The September 2 order of the United States District Court for the Central District of California is vacated, and the case remanded to the Court of Appeals for the Ninth Circuit with instructions to remand to the District Court for further consideration in light of *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 592 U. S. 14 (2020).

DECEMBER 4, 2020

Certiorari Granted

No. 20–37. AZAR, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. *v.* GRESHAM ET AL.; and AZAR, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. *v.* PHILBRICK ET AL.; and No. 20–38. ARKANSAS *v.* GRESHAM ET AL. C. A. D. C. Cir. Certiorari granted, cases consolidated, and a total of one hour is allotted for oral argument. Reported below: No. 20–37 (frst judgment) and No. 20–38, 950 F. 3d 93.

DECEMBER 7, 2020

Certiorari Dismissed

No. 20–5968. DRIESSEN *v.* MIAMI-DADE COUNTY, FLORIDA, ET AL. Dist. Ct. App. Fla., 3d Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). Reported below: 290 So. 3d 978.

Miscellaneous Orders

No. 20A79. DUBIN *v.* OFFICE OF DISCIPLINARY COUNSEL. Sup. Ct. Haw. Application for stay, addressed to JUSTICE THOMAS and referred to the Court, denied.

No. 20M43. DEBERA P. *v.* MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES. Motion for leave to f le petition for writ of certiorari under seal granted.

No. 143, Orig. MISSISSIPPI *v.* TENNESSEE ET AL. Report of the Special Master received and ordered f led. Exceptions to the Report, with supporting briefs, may be f led within 45 days. Replies, if any, with supporting briefs, may be f led within 30 days. Surreplies, if any, with supporting briefs, may be f led within 30 days. [For earlier order herein, see, *e. g.*, 577 U. S. 981.]

No. 19–968. UZUEGBUNAM ET AL. *v.* PRECZEWSKI ET AL. C. A. 11th Cir. [Certiorari granted, 591 U. S. 1028.] Motion of

the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 19–8501. LIVINGSTON *v.* NEBRASKA. Ct. App. Neb. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [592 U. S. 909] denied.

No. 19–8585. JACKSON *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [591 U. S. 1014] denied. JUSTICE BARRETT took no part in the consideration or decision of this motion.

No. 20–107. CEDAR POINT NURSERY ET AL. *v.* HASSID ET AL. C. A. 9th Cir. [Certiorari granted, 592 U. S. 1094.] Motion of petitioners to dispense with printing joint appendix granted.

No. 20–319. COMCAST CORP. ET AL. *v.* VIAMEDIA, INC. C. A. 7th Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE BARRETT took no part in the consideration of this petition.

No. 20–5045. IN RE JONES. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [592 U. S. 911] denied.

No. 20–5046. IN RE JONES. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [592 U. S. 912] denied.

No. 20–5047. IN RE JONES. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [592 U. S. 912] denied.

No. 20–5229. LOPEZ *v.* COSTA MESA POLICE DEPARTMENT ET AL. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [592 U. S. 905] denied.

No. 20–5230. LOPEZ *v.* NEWPORT BEACH POLICE DEPARTMENT ET AL. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [592 U. S. 905] denied.

No. 20–5581. DREVALEVA *v.* UNITED STATES. C. A. Fed. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [592 U. S. 994] denied.

No. 20–5876. In re Keller; and

No. 20–5886. Smith *v.* Dobin. C. A. 3d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 28, 2020, within which to pay the docketing fees required by this Court's Rule 38 (a).

No. 20–629. In re Beggs et ux.; and

No. 20–6267. In re Schiff. Petitions for writs of habeas corpus denied.

No. 20–375. In re Zimmermann. Petition for writ of mandamus and/or prohibition denied.

No. 20–404. In re Masiz. Petition for writ of prohibition denied.

Certiorari Denied

No. 19–1477. Man *v.* Barr, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 3d 1354.

No. 19–8461. Paz-Tejeda *v.* Barr, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 601.

No. 19–8635. Brown *v.* Kentucky. Ct. App. Ky. Certiorari denied.

No. 20–27. Paskert *v.* Kemna-ASA Auto Plaza, Inc., dba Auto Smart of Spirit Lake, et al. C. A. 8th Cir. Certiorari denied. Reported below: 950 F. 3d 535.

No. 20–62. Parents for Privacy et al. *v.* Barr, Attorney General, et al. C. A. 9th Cir. Certiorari denied. Reported below: 949 F. 3d 1210.

No. 20–111. Strand *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 951 F. 3d 1347.

No. 20–237. Old Republic Home Protection Co., Inc. *v.* Sparks et al. Sup. Ct. Okla. Certiorari denied. Reported below: 2020 OK 42, 467 P. 3d 680.

No. 20–240. Kentucky *v.* White. Sup. Ct. Ky. Certiorari denied. Reported below: 600 S. W. 3d 176.

No. 20–253. Castagna et al. *v.* Jean et al. C. A. 1st Cir. Certiorari denied. Reported below: 955 F. 3d 211.

No. 20–296. Le *v.* Braithwaite, Secretary of the Navy. C. A. 9th Cir. Certiorari denied.

No. 20–320. DOE ET AL., INDIVIDUALLY AND AS THE NATURAL PARENTS AND NEXT OF KIN OF MINOR DOE *v.* JACKSON LOCAL SCHOOL DISTRICT BOARD OF EDUCATION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 954 F. 3d 925.

No. 20–377. ACKERMAN *v.* DEUTSCHE BANK NATIONAL TRUST CO. Super. Ct. Pa. Certiorari denied. Reported below: 222 A. 3d 846.

No. 20–379. CERTAIN UNDERWRITERS AT LLOYD'S LONDON *v.* BRIGHTON COLLECTIBLES, LLC. C. A. 9th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 144.

No. 20–381. HAMILTON COUNTY JOB AND FAMILY SERVICES ET AL. *v.* SIEFERT ET UX. C. A. 6th Cir. Certiorari denied. Reported below: 951 F. 3d 753.

No. 20–389. SCHAFFER ET AL. *v.* LONG. C. A. 9th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 400.

No. 20–392. KAMARA *v.* NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF STATE POLICE. Super. Ct. N. J., App. Div. Certiorari denied.

No. 20–393. RAHMI *v.* PILL & PILL, PLLC. Sup. Ct. App. W. Va. Certiorari denied.

No. 20–394. SCHUM *v.* FORTRESS VALUE RECOVERY FUND I, L. L. C., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 319.

No. 20–396. SPEER *v.* TIEGER ET AL. C. A. 2d Cir. Certiorari denied.

No. 20–398. STRONG *v.* COUNTRYWIDE HOME LOANS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 728.

No. 20–403. VALENTIN ET AL. *v.* CALIFORNIA. App. Div., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 20–412. KATZMAN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 330 Mich. App. 128, 946 N. W. 2d 807.

No. 20–413. THOMAS *v.* BLEVINS. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 20–419. DECK *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 20–428. SEQUEIRA *v.* REPUBLIC OF NICARAGUA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 345.

No. 20–438. REITER ET AL. *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 20–439. MANTISSA CORP. *v.* ONDOT SYSTEMS, INC., ET AL. C. A. Fed. Cir. Certiorari denied.

No. 20–445. ANDERSON *v.* BONNEWELL ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 228 A. 3d 139.

No. 20–447. RODRIGUEZ-CASTRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 814 Fed. Appx. 835.

No. 20–451. DOE, INDIVIDUALLY AND AS PARENT AND GUARDIAN OF BABY DOE, ET AL. *v.* MERCK & CO., INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 803 Fed. Appx. 559.

No. 20–458. BROWN *v.* DEPARTMENT OF LABOR. C. A. 11th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 940.

No. 20–461. UNITED STATES EX REL. HOUPT *v.* WELLS FARGO BANK, N. A. C. A. 9th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 533.

No. 20–463. HEGHMANN *v.* DEMOCRATIC NATIONAL COMMITTEE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 209.

No. 20–465. YOUNG COUNTY, TEXAS, ET AL. *v.* SANCHEZ ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 956 F. 3d 785.

No. 20–467. TALBOT ET AL. *v.* U. S. BANK N. A. C. A. 6th Cir. Certiorari denied. Reported below: 814 Fed. Appx. 1.

No. 20–494. BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE *v.* GRUVER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 959 F. 3d 178.

No. 20–525. RUTILA *v.* DEPARTMENT OF TRANSPORTATION. C. A. Fed. Cir. Certiorari denied. Reported below: 801 Fed. Appx. 745.

No. 20–526. BLACKBURN *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied.

No. 20–528. BAAS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied.

No. 20–529. BOGGS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 174.

No. 20–531. HUTTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–533. BOUDREAU, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BOUDREAU *v.* SHAW'S SUPERMARKETS, INC. C. A. 1st Cir. Certiorari denied. Reported below: 955 F. 3d 225.

No. 20–537. WALKER ET AL. *v.* MINNESOTA COMMISSIONER OF MANAGEMENT AND BUDGET. Ct. App. Minn. Certiorari denied.

No. 20–547. CRUZ VAZQUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 20–548. SHELTON *v.* TANNER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 20–550. HEON JONG YOO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 949.

No. 20–552. RICE *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2019 IL App (3d) 170134, 125 N. E. 3d 546.

No. 20–555. THOMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 251.

No. 20–563. HARRIS COUNTY, TEXAS *v.* PRSI TRADING, LLC. Sup. Ct. Tex. Certiorari denied. Reported below: 599 S. W. 3d 303.

No. 20–566. UNITED STATES EX REL. JUAN *v.* HAUSER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 596.

No. 20–568. GEOFFROY *v.* TOWN OF WINCHENDON, MASSACHUSETTS, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 959 F. 3d 1.

No. 20–570. CVIJANOVICH *v.* UNITED STATES SECRET SERVICE. C. A. 8th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 590.

No. 20–572. YOUNG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 20–576. LOPEZ *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 46 Cal. App. 5th 317, 260 Cal. Rptr. 3d 18.

No. 20–577. IBRAHIM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 798 Fed. Appx. 694.

No. 20–581. UNITED STATES EX REL. INTEGRA MED ANALYTICS, L. L. C. *v.* BAYLOR SCOTT & WHITE HEALTH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 892.

No. 20–584. WOOD ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 801 Fed. Appx. 833.

No. 20–586. GERSKY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 772.

No. 20–613. COULTAS *v.* TICHENOR, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS YAMHILL COUNTY PROSECUTOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 554.

No. 20–628. ANSTEY *v.* TERRY, SUPERINTENDENT, MOUNT OLIVE CORRECTIONAL COMPLEX, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 280.

No. 20–642. MENDOZA *v.* UBER TECHNOLOGIES INC. C. A. 9th Cir. Certiorari denied.

No. 20–643. D&G, INC., DBA GARY'S FOODS, ET AL. *v.* C&S WHOLESALE GROCERS, INC. C. A. 8th Cir. Certiorari denied. Reported below: 957 F. 3d 879.

No. 20–5132. CRAY *v.* WARDEN, FEDERAL CORRECTIONAL INSTITUTION COLEMAN-MEDIUM. C. A. 11th Cir. Certiorari denied.

No. 20–5172. WILLIAMS *v.* COAKLEY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 170.

No. 20–5264. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 958 F. 3d 494.

No. 20–5360. DENNES *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 835.

No. 20–5379. DAVIS *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 195 Wash. 2d 571, 461 P. 3d 1204.

No. 20–5532. GOLDEN *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 955 F. 3d 981.

No. 20–5562. HESSLER *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 305 Neb. 451, 940 N. W. 2d 836.

No. 20–5588. WALLACE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 964 F. 3d 386.

No. 20–5619. MINYARD *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 374 N. C. 261, 839 S. E. 2d 848.

No. 20–5768. BARBER *v.* WASMER, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 20–5786. SWEET *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 293 So. 3d 448.

No. 20–5810. TORRES *v.* DIAZ ET AL. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 20–5811. TORRES *v.* DALLAS/FORT WORTH INTERNATIONAL AIRPORT ET AL. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 20–5817. LEWIS *v.* DECKER ET AL. C. A. 6th Cir. Certiorari denied.

No. 20–5821. SIMPSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 20–5823. SPENGLER *v.* LOS ANGELES COUNTY DISTRICT ATTORNEY. C. A. 9th Cir. Certiorari denied.

No. 20–5826. George *v.* Madden, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 794 Fed. Appx. 681.

No. 20–5827. Spengler *v.* Villanueva. C. A. 9th Cir. Certiorari denied.

No. 20–5831. Danam *v.* Arizona Board of Education. Ct. App. Ariz. Certiorari denied.

No. 20–5838. Nelson *v.* Brown, Acting Warden. C. A. 6th Cir. Certiorari denied.

No. 20–5845. Scott *v.* Burl, Warden, et al. C. A. 8th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 449.

No. 20–5846. Green *v.* Lake, Sheriff, Carlton County, Minnesota, et al. C. A. 8th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 467.

No. 20–5849. Igbonwa *v.* Facebook, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 786 Fed. Appx. 104.

No. 20–5856. Barrie *v.* Robinson. C. A. 4th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 121.

No. 20–5858. Briscoe *v.* Chambers-Smith, Director, Ohio Rehabilitation and Correction, et al. C. A. 6th Cir. Certiorari denied.

No. 20–5859. Blanke *v.* Utah Board of Pardons and Parole. Sup. Ct. Utah. Certiorari denied. Reported below: 2020 UT 39, 467 P. 3d 850.

No. 20–5863. Newson *v.* Wisconsin. Sup. Ct. Wis. Certiorari denied.

No. 20–5867. Alverto *v.* Cline. C. A. 9th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 329.

No. 20–5883. Comrie *v.* California. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 20–5887. Lewis *v.* Michigan. Sup. Ct. Mich. Certiorari denied. Reported below: 505 Mich. 1039, 942 N. W. 2d 23.

No. 20–5888. Smith *v.* Johnson, Administrator, New Jersey State Prison, et al. C. A. 3d Cir. Certiorari denied.

No. 20–5892. STODDARD *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 286 So. 3d 774.

No. 20–5893. RAVON *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 302 So. 3d 865.

No. 20–5897. WILLIAMS *v.* MCCAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 20–5898. USSERY *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 596 S. W. 3d 277.

No. 20–5899. SKANDHA *v.* BATES. App. Ct. Mass. Certiorari denied. Reported below: 144 Mass. App. 329, 97 N. E. 3d 1113.

No. 20–5901. SCOTT *v.* CITY OF HAMTRAMCK, MICHIGAN, TREASURER, ET AL. C. A. 6th Cir. Certiorari denied.

No. 20–5906. BARBER *v.* BURKE ET AL. C. A. 5th Cir. Certiorari denied.

No. 20–5907. PETERSON *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 2018–1045 (La. App. 4 Cir. 1/8/20), 289 So. 3d 93.

No. 20–5911. ALBRITTON *v.* BRNOVICH, ATTORNEY GENERAL OF ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–5916. DELPH *v.* UNIVERSITY OF ARKANSAS FOR MEDICAL SCIENCES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 342.

No. 20–5920. CORTEZ *v.* IOWA. Ct. App. Iowa. Certiorari denied. Reported below: 948 N. W. 2d 535.

No. 20–5921. CRAIG *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 311 Kan. 456, 462 P. 3d 173.

No. 20–5924. WYNN *v.* BUTLER, COMMISSIONER, GEORGIA DEPARTMENT OF LABOR, ET AL. Ct. App. Ga. Certiorari denied.

No. 20–5931. PETRANO ET UX. *v.* BAYLOR. Dist. Ct. App. Fla., 1st Dist. Certiorari denied.

No. 20–5934. HOLDEN *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5935. HOLLAND *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 505 Mich. 975, 937 N. W. 2d 649.

No. 20–5938. WISTER *v.* WHITE ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–5945. CLARMONT *v.* CHAPMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–5950. RILEY *v.* INDIANA DEPARTMENT OF CORRECTION ET AL. Ct. App. Ind. Certiorari denied.

No. 20–5964. MCDONALD *v.* TITUS, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 20–5965. PELINO *v.* ZAKEN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 20–5981. GARZA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2018 IL App (1st) 1152041–U.

No. 20–5986. WILSON *v.* GABITES ET AL. Ct. App. Mich. Certiorari denied.

No. 20–5990. MORENO-RUIZ *v.* BARR, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 787 Fed. Appx. 970.

No. 20–5994. LEEKOMON *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 351 Ga. App. 836, 832 S. E. 2d 437.

No. 20–5997. FRANCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 973 F. 3d 465.

No. 20–5998. PRENTICE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 956 F. 3d 295.

No. 20–6001. CANADY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 891.

No. 20–6002. DALE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–6024. PARNELL *v.* FRAKES, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 8th Cir. Certiorari denied.

No. 20–6032. NOLAN *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 20–6048. GODINE *v.* MONTGOMERY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 20–6059. DURAN *v.* ALLISON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 20–6061. BUCHANAN *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist., Div. 5. Certiorari denied. Reported below: 39 Cal. App. 5th 385, 251 Cal. Rptr. 3d 803.

No. 20–6064. SMITH *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 20–6068. GROSS *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 20–6069. HOWELL *v.* INDIANA. Ct. App. Ind. Certiorari denied.

No. 20–6073. LITTLEJOHN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 760.

No. 20–6075. MCCARTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 327.

No. 20–6076. PENA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 976.

No. 20–6083. WOOTEN *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 814 Fed. Appx. 50.

No. 20–6084. WAINWRIGHT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 601.

No. 20–6085. YANEZ *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 20–6086. KETTLES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 970 F. 3d 637.

No. 20–6088. BAEZ-CASTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 332.

No. 20–6089. HILL *v.* BAUMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–6091. HOLLIE *v.* WILKIE, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 810 Fed. Appx. 888.

No. 20–6092. HILL *v.* WARDEN OF LEE COUNTY, UNITED STATES PENITENTIARY. C. A. 4th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 894.

No. 20–6095. CHANEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 278.

No. 20–6100. MEZA-CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 324.

No. 20–6101. SKIDMORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 333.

No. 20–6102. CAMERON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 1020.

No. 20–6103. DALE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–6105. OLIVER *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 305.

No. 20–6106. CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–6108. WASHINGTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 963 F. 3d 309.

No. 20–6110. HOGANS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 881.

No. 20–6116. WERNICKE *v.* COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT, ET AL. Sup. Ct. Cal. Certiorari denied.

No. 20–6121. LIZARRAGA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–6122. CAPELTON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 966 F. 3d 1.

No. 20–6124. LOAIZA-GASPAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 365.

No. 20–6133. NEWCOMB *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 47.

No. 20–6134. ALFREDO FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 360.

No. 20–6135. BARBER *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–6137. ANDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 774 Fed. Appx. 608.

No. 20–6140. ALMANZAR *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 20–6141. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 962 F. 3d 755.

No. 20–6143. MANGUAL-CORCHADO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 20–6146. STEWART *v.* STODDARD, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 967 F. 3d 534.

No. 20–6147. ROBERTS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–6148. MERINORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 134.

No. 20–6149. SANCHEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 955 F. 3d 669.

No. 20–6150. ROMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 972.

No. 20–6151. COSTANZO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 956 F. 3d 1088.

No. 20–6153. JEFFRIES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 958 F. 3d 517.

No. 20–6154. PEREZ-GONZALEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 967 F. 3d 53.

No. 20–6155. SANDOVAL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 959 F. 3d 1243.

No. 20–6156. HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 295.

No. 20–6157. HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 776.

No. 20–6163. BANKSTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 20–6167. SEPEHRY-FARD *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied.

No. 20–6169. GARNER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 961 F. 3d 264.

No. 20–6170. BROWN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 240.

No. 20–6172. MANUEL VILLAVICENCIO, AKA RODRIGUEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 88.

No. 20–6178. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 80.

No. 20–6179. HAI DUONG *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 20–6180. REYES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 819 Fed. Appx. 41.

No. 20–6185. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 957 F. 3d 218.

No. 20–6186. KAYARATH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 786.

No. 20–6188. EZEKA *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 946 N. W. 2d 393.

No. 20–6189. JAVIER NUNEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 29.

No. 20–6191. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 485.

No. 20–6193. HARRELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 20–6195. TORRES ZUNIGA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 260.

No. 20–6196. WALLACE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 957 F. 3d 218.

No. 20–6198. CHAVEZ *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 294 So. 3d 896.

No. 20–6204. CURRY *v.* ROBERSON. C. A. 7th Cir. Certiorari denied.

No. 20–6213. MONDRAGON-BENITEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 401.

No. 20–6214. POWERS *v.* WARDEN, UNITED STATES PENITENTIARY, ALLENWOOD. C. A. 3d Cir. Certiorari denied. Reported below: 824 Fed. Appx. 95.

No. 20–6215. GARCIA-MORALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 942 F. 3d 474.

No. 20–6216. TORRES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 961 F. 3d 618.

No. 20–6220. MCCLURG *v.* UNITED STATES (Reported below: 811 Fed. Appx. 945); BOOKER *v.* UNITED STATES (810 Fed. Appx. 443); MORGAN *v.* UNITED STATES (806 Fed. Appx. 465); O'DELL *v.* UNITED STATES (813 Fed. Appx. 180); PLEMONS *v.* UNITED STATES (818 Fed. Appx. 407); SCHUMAKER *v.* UNITED STATES (820 Fed. Appx. 378); and TIGUE *v.* UNITED STATES (811 Fed. Appx. 970). C. A. 6th Cir. Certiorari denied.

No. 20–6230. ALEXANDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 414.

No. 20–6236. NDIBALEMA *v.* LEVINE. Sup. Ct. Vt. Certiorari denied.

No. 20–6237. PARKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 231.

No. 20–6238. PARKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 892.

No. 20–6243. SADIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 20–6244. HA *v.* POPOFF, SUPERINTENDENT, OREGON STATE CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 20–6246. BOGEMA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 484.

No. 20–6248. BROOKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 291.

No. 20–6249. KUZMA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 967 F. 3d 959.

No. 20–6255. DUBOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 327.

No. 20–6259. DE JESUS-CONCEPCION *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 20–388. LINGFEI SUN *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 803 Fed. Appx. 469.

No. 20–5919. DAVIS *v.* WILSON, JUDGE, SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY, ET AL. C. A. 9th Cir. Certiorari before judgment denied.

No. 20–5922. HOOK *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 807 Fed. Appx. 893.

No. 20–6012. YOUNG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 955 F. 3d 608.

No. 20–6182. RAINEY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 227 A. 3d 423.

No. 20–6201. THOMAS *v.* CALLOWAY, WARDEN. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition.

No. 20–6221. NUNEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 954 F. 3d 465.

No. 20–6231. ZAVALA *v.* HOLLAND, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 809 Fed. Appx. 370.

Rehearing Denied

No. 19–1290. Bennett *v.* Marvel Entertainment, LLC, 592 U. S. 915;

No. 19–1341. Van Auken, as Trustee and Beneficiary *v.* Catron et al., 592 U. S. 915;

No. 19–1371. Waldner *v.* Hartke et al., 592 U. S. 918;

No. 19–1374. Gutierrez *v.* California, 592 U. S. 919;

No. 19–1408. Coppedge et al *v.* Charlton, 592 U. S. 920;

No. 19–1421. LaFlamme *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division, 592 U. S. 921;

No. 19–1430. Polidi *v.* Lee et al., 592 U. S. 922;

No. 19–1463. Oliver *v.* Oliver et al., 592 U. S. 923;

No. 19–8317. Taebel *v.* Ducey, Governor of Arizona, et al., 591 U. S. 1019;

No. 19–8420. Wilson *v.* Wisconsin, 592 U. S. 926;

No. 19–8425. Anderson *v.* Colorado, 592 U. S. 926;

No. 19–8435. Williams *v.* Duffy et al., 592 U. S. 927;

No. 19–8457. Allen *v.* Mine et al., 592 U. S. 928;

No. 19–8538. Smiles *v.* Berks County, Pennsylvania, et al., 592 U. S. 930;

No. 19–8609. Sameer *v.* Khera et al., 592 U. S. 932;

No. 19–8634. Bey, fka Brown *v.* Doughtery County State Court, 592 U. S. 934;

No. 19–8739. Womack *v.* Finkelstein, Assistant Clerk, Superior Court of North Carolina, Buncombe County, 592 U. S. 939;

No. 19–8749. Crayton *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division, 592 U. S. 940;

No. 19–8796. Rodgers *v.* McIntyre et al., 592 U. S. 943;

No. 19–8798. Salahuddin *v.* Shinn, Director, Arizona Department of Corrections, 592 U. S. 943;

No. 19–8852. Sameer *v.* Khera, 592 U. S. 946;

No. 19–8862. Allen *v.* Total Visa et al., 592 U. S. 946;

No. 19–8930. Dunahue *v.* Kelley, Director, Arkansas Department of Correction, et al., 592 U. S. 950;

No. 20–17. Robertson *v.* Honn et al., 592 U. S. 951;

No. 20–44. In re Golden, 592 U. S. 911;

No. 20–59. Campbell *v.* Bennett et al., 592 U. S. 952;

No. 20–142. SKIDMORE, AS TRUSTEE FOR THE RANDY CRAIG WOLFE TRUST *v.* ZEPPELIN ET AL., 592 U. S. 986;

No. 20–184. ELLERBEE *v.* ANNETT HOLDINGS, INC., DBA TMC TRANSPORTATION, ET AL., 592 U. S. 1025;

No. 20–5069. ROSADO-SANCHEZ *v.* BANCO SANTANDER PUERTO RICO, 592 U. S. 961;

No. 20–5232. ANDERSON *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., 592 U. S. 969;

No. 20–5314. STUBBLEFIELD *v.* BROWN, CLERK, CIRCUIT COURT OF ILLINOIS, COOK COUNTY, ET AL., 592 U. S. 1005;

No. 20–5324. IN RE YBARRA, 592 U. S. 910;

No. 20–5449. DAWSON *v.* PAKENHAM, 592 U. S. 1027;

No. 20–5520. WILLIAMSON *v.* MAY, WARDEN, 592 U. S. 1007;

No. 20–5523. JURY *v.* GRAY, WARDEN, 592 U. S. 1007; and

No. 20–5609. IN RE BARNES, 592 U. S. 910. Petitions for rehearing denied.

No. 19–140. RHEINSTEIN *v.* ATTORNEY GRIEVANCE COMMISSION OF MARYLAND, 589 U. S. 974. Motion for leave to file petition for rehearing denied.

No. 20–311. WALTON *v.* FIRST MERCHANT'S BANK, 592 U. S. 1026. Petition for rehearing denied. JUSTICE BARRETT took no part in the consideration or decision of this petition.

DECEMBER 8, 2020

Miscellaneous Order

No. 20A98. KELLY, UNITED STATES CONGRESSMAN, ET AL. *v.* PENNSYLVANIA ET AL. Sup. Ct. Pa. Application for injunctive relief, presented to JUSTICE ALITO, and by him referred to the Court, denied.

DECEMBER 10, 2020

Certiorari Denied

No. 20–6570 (20A110). BERNARD *v.* UNITED STATES. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied. Certiorari denied. JUSTICE BREYER and JUSTICE KAGAN would grant the application and the petition for writ of certiorari.

JUSTICE SOTOMAYOR, dissenting.

Today, the Court allows the Federal Government to execute Brandon Bernard, despite Bernard's troubling allegations that the Government secured his death sentence by withholding exculpatory evidence and knowingly eliciting false testimony against him. Bernard has never had the opportunity to test the merits of those claims in court. Now he never will. I would grant Bernard's petition for a writ of certiorari and application for a stay to ensure his claims are given proper consideration before he is put to death.

The prosecution sought the death penalty for Bernard partly on the theory that he was "likely to commit criminal acts of violence in the future." Electronic Case Filing in No. 2:20–cv–00616, Doc. 3 (SD Ind., Nov. 24, 2020) (App. Vol. I), p. 46 (ECF). To prove Bernard's future dangerousness, the prosecution repeatedly invoked his gang affiliations, see *id.*, at 389–422, in particular emphasizing that all members of his gang were supposedly "equal." See, *e. g.*, *id.*, at 379 ("Q: . . . And did you ever have a conversation . . . regarding everyone being equal in the gang? A: Yes, sir"). By claiming that all gang members were equal, the prosecution in turn argued that Bernard was as dangerous as any other member of the gang and was destined for a life of violence in prison. See, *e. g.*, *id.*, at 414 ("Q: [What happens] when . . . a new . . . gang member comes onboard to the federal prison system[?] A: Well, for one, he would have to, what they call, `make your bones.' You have to earn being a gang member, which means you have to commit a crime, or what we consider a Bureau of Prisons violation"). The strategy worked: The jury found that Bernard posed an ongoing risk to the safety of others and, ultimately, recommended the death penalty.[1]

Nearly two decades later, in a resentencing proceeding for one of Bernard's codefendants, the prosecution called Sergeant Sandra Hunt, the former head of the Gang Unit in the Police Department for Killeen, Texas. Sergeant Hunt testifed that she had told the prosecution before Bernard's trial that the gang Bernard had been associated with was not composed of equal members. Instead, it was a thirteen-tier hierarchy with Bernard at the very bottom. Sergeant Hunt also produced a pyramidal diagram, de-

[1] We now know the prosecution's predictions about Bernard's future dangerousness were entirely inaccurate. Bernard has not committed a single disciplinary infraction in his two decades in prison.

veloped in consultation with a government informant, to illustrate the gang's structure. Both Sergeant Hunt's testimony and this diagram conflicted heavily with the prosecution's characterization during Bernard's sentencing of the gang's fat structure and Bernard's position within it. Hunt's testimony also made clear that the prosecution had known about this diagram when it tried Bernard. See ECF Doc. 3, at 226 ("Q: Did you at that time, at our request, go back to see if any of the identities of any of the other people who were involved in that were on this chart? A: Yes, I did"); *ibid.* ("Q: And did you locate the individual known as Brandon Bernard on this chart? A: I did").

Soon after Sergeant Hunt's testimony, Bernard moved for relief from his death sentence in Federal District Court. According to Bernard, the Government never disclosed Sergeant Hunt's opinion that he was on the periphery of the gang or the existence of the diagram illustrating his subordinate role.[2] With this information, Bernard argued, he could have undermined the prosecution's case that he was an equal participant in gang activity and posed the same risk of future dangerousness as other gang members. Thus, Bernard claimed, the Government had violated its obligation to turn over exculpatory evidence under *Brady* v. *Maryland*, 373 U. S. 83 (1963), and had elicited knowingly false testimony concerning his role in the gang in violation of *Napue* v. *Illinois*, 360 U. S. 264 (1959).

The Court of Appeals for the Fifth Circuit denied Bernard's motion without considering his *Brady* and *Napue* claims on the merits. 820 Fed. Appx. 309 (2020) (*per curiam*). According to the Fifth Circuit, because Bernard had already petitioned for relief from his death sentence in the past, his current motion was subject to the strict rules that apply to second or successive

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[2] The Government argues that, because it chose not to call Sergeant Hunt until years after Bernard's trial, it could not have improperly suppressed an expert opinion "that had not yet been expressed." Brief in Opposition 23. But Sergeant Hunt's testimony confirms that she offered her opinion on the gang's structure and the status of members within it (including Bernard) to the prosecution at the time of Bernard's trial. The Government also argues that, before trial, it disclosed to Bernard's defense the existence of a handwritten version of the same diagram as a possible exhibit. Whether that constitutes proper disclosure under *Brady* v. *Maryland*, 373 U. S. 83 (1963), and mitigates Bernard's claim is the type of issue best resolved by the District Court in the course of evaluating Bernard's claims on the merits.

petitions. Those rules, which are designed to encourage inmates to raise promptly all objections to their conviction, require a petitioner f ling a second-in-time petition to produce "newly discovered evidence . . . suffcient to establish by clear and convincing evidence that no reasonable factf nder would have found the movant guilty of the offense." 28 U. S. C. § 2255(h)(1). This standard is far more stringent than the "`reasonable probability of a different result'" standard that typically applies to *Brady* claims. *Banks* v. *Dretke*, 540 U. S. 668, 699 (2004) (quoting *Kyles* v. *Whitley*, 514 U. S. 419, 434 (1995)).

The Fifth Circuit got it wrong. Its illogical rule conf icts with this Court's precedent, and it rewards prosecutors who successfully conceal their *Brady* and *Napue* violations until after an inmate has sought relief from his convictions on other grounds. This Court held in *Panetti* v. *Quarterman*, 551 U. S. 930 (2007), that the restrictions on second-or-successive petitions do not apply to a claim that was not ripe when the inmate f led his frst-i n-time petition. *Id.*, at 945.[3] Any other rule would have troubling consequences, as *Panetti* explained. Through no fault of their own, inmates would "`run the risk' . . . of `forever losing their opportunity for any federal review of their unexhausted claims.'" *Id.*, at 945–946 (quoting *Rhines* v. *Weber*, 544 U. S. 269, 275 (2005)). Consequently, "conscientious defense attorneys would be obliged to f le unripe (and, in many cases, meritless) . . . claims in each and every" case to preserve claims in case they later became ripe. 551 U. S., at 943.

Panetti's reasoning applies with full force to *Brady* claims. As in *Panetti*, applying the bar on second-or-successive habeas petitions to *Brady* claims "would produce troublesome results, create procedural anomalies, and close [the courthouse] doors to a class of habeas petitioners seeking review without any clear indication that such was Congress' intent." 551 U. S., at 946 (quoting *Castro* v. *United States*, 540 U. S. 375, 380–381 (2003); internal quotation marks omitted). Take the present case. How exactly was Bernard supposed to have raised a *Brady* claim more than a decade

[3] In other words, as JUSTICE BREYER explained in *Magwood* v. *Patterson*, 561 U. S. 320 (2010), "*Panetti*'s holding [is] that an application containing a claim that the petitioner had no fair opportunity to raise in his frst habeas petition is not a second or successive application." *Id.*, at 343 (opinion concurring in part and concurring in judgment) (internal quotation marks omitted).

ago when he brought his frst habeas petition, given that he was unaware of the evidence the Government concealed from him?

Yet that is what the Fifth Circuit's rule demands.[4] That rule perversely rewards the Government for keeping exculpatory information secret until after an inmate's frst habeas petition has been resolved. Prosecutors who successfully conceal their violations avoid accountability so long as they can show that the withheld evidence would not "be suffcient to establish by clear and convincing evidence that no reasonable factf nder would have found the movant guilty of the offense." 28 U. S. C. § 2255(h)(1). Under this rule, prosecutors can run out the clock and escape any responsibility for all but the most extreme violations.

If the prosecution had not committed the *Brady* and *Napue* violations Bernard alleges, there is a reasonable probability Bernard would have been spared a death sentence. By all indications, the jury's decision to sentence him to death was anything but easy. See, *e. g.*, *In re Bernard*, Petition for Clemency Seeking Commutation of Death Sentence, Exh. E–1 (Nov. 10, 2020) (Decl. of Juror Gary McClung, Jr.) ("The penalty phase was not as easy for me. I was uncomfortable giving Mr. Bernard the death penalty and have been bothered with my decision since trial"). The jury rejected the death penalty on two of Bernard's three death-eligible convictions. Five of the nine jurors at Bernard's trial now either support or do not oppose a clemency petition to commute his death sentence to life in prison. See *id.*, Exhs. A–I. Against that backdrop, there is a reasonable probability that evidence casting doubt on a centerpiece of the Government's the-

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[4] The Fifth Circuit's ruling follows that of several other Circuits. See, *e. g.*, *Tompkins* v. *Secretary, Dept. of Corrections*, 557 F. 3d 1257, 1260 (CA11 2009). Those decisions suffer from the same fatal faws, as recognized by judges across the Courts of Appeals. See *Long* v. *Hooks*, 972 F. 3d 442, 486 (CA4 2020) (Wynn, J., concurring) ("[T]o subject *Brady* claims to the heightened standard of § 2244(b)(2) is to reward investigators or prosecutors who engage in the unconstitutional suppression of evidence with a `win'"); *Scott* v. *United States*, 890 F. 3d 1239, 1258 (CA11 2018) (arguing that the Eleventh Circuit's decision adopting the same rule as the Fifth Circuit's should be reconsidered en banc because it "is fatally fawed" and fails "to adhere to—or even to attempt to apply—the *Panetti* factors"); *Gage* v. *Chappell*, 793 F. 3d 1159, 1165 (CA9 2015) ("Under our precedents as they currently stand, prosecutors may have an incentive to refrain from disclosing *Brady* violations related to prisoners who have not yet sought collateral review").

ory that Bernard posed a risk of future dangerousness would have been enough to persuade just one juror to reject the death penalty.

That is all that is required for relief under *Brady* and *Napue*. Yet because of the Fifth Circuit's rule, Bernard's claim was rejected without fair consideration of its merits. Bernard should not be executed before his claims have been tested under the correct standard. Nor should others like him find themselves procedurally barred by similarly perverse and illogical rules. For those reasons, I would grant Bernard's petition and application for a stay.

DECEMBER 11, 2020

Miscellaneous Order

No. 155, Orig. TEXAS *v.* PENNSYLVANIA ET AL. The State of Texas' motion for leave to file bill of complaint denied for lack of standing under Article III of the Constitution. Texas has not demonstrated a judicially cognizable interest in the manner in which another State conducts its elections. All other pending motions dismissed as moot.

Statement of JUSTICE ALITO, with whom JUSTICE THOMAS joins.

In my view, we do not have discretion to deny the filing of a bill of complaint in a case that falls within our original jurisdiction. See *Arizona* v. *California*, 589 U. S. 1199 (THOMAS, J., dissenting). I would therefore grant the motion to file the bill of complaint but would not grant other relief, and I express no view on any other issue.

Certiorari Granted

No. 20–222. GOLDMAN SACHS GROUP, INC., ET AL. *v.* ARKANSAS TEACHER RETIREMENT SYSTEM ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 955 F. 3d 254.

Certiorari Denied

No. 20–6500 (20A104). BOURGEOIS *v.* WATSON, WARDEN, ET AL. Application for stay of execution of sentence of death, presented to JUSTICE BARRETT, and by her referred to the Court, denied. Certiorari denied.

JUSTICE SOTOMAYOR, with whom JUSTICE KAGAN joins, dissenting.

The Federal Death Penalty Act (FDPA) provides that "a sentence of death shall not be carried out upon a person who is mentally retarded." 18 U. S. C. § 3596(c). The Court today allows the execution of Alfred Bourgeois to proceed even though Bourgeois, who has an IQ between 70 and 75, argues that he is intellectually disabled under current clinical standards. I would grant his petition to address whether the FDPA prohibits his execution.

The District Court in this case applied currently prevailing diagnostic standards to find that Bourgeois had made a "strong showing" that he is intellectually disabled. See *Bourgeois* v. *Warden*, 2020 WL 1154575, *4 (SD Ind., Mar. 10, 2020). The Court of Appeals for the Seventh Circuit reversed. 977 F. 3d 620, 638 (2020). It did not do so because Bourgeois is fit to be executed under the FDPA, but rather because, nearly a decade ago, a different Federal District Court found that Bourgeois was not intellectually disabled under the standards in place at that time. See *United States* v. *Bourgeois*, 2011 WL 1930684 (SD Tex., May 19, 2011). That court, however, relied heavily on its own lay observations and assumptions about how people with intellectual disabilities act and what they are capable of doing. See, *e. g.*, *id.*, at *29 ("Bourgeois graduated from high school"); *id.*, at *43 ("[H]e can engage in the give-and-take of normal conversation"). Both this Court and the medical community have since squarely rejected that type of inexpert analysis. See, *e. g.*, *Moore* v. *Texas*, 581 U. S. 1, 18 (2017) (holding it error to rely on "lay perceptions of intellectual disability"); *Moore* v. *Texas*, 586 U. S. 133, 140 (2019) (*per curiam*) (finding the state court erred in relying on the defendant's ability to provide "`coherent' testimony"); Pet. for Cert. 17–18 (citing expert groups debunking these stereotypes).

In the Seventh Circuit's view, even if Bourgeois is intellectually disabled under today's standards, he is nonetheless procedurally barred from raising that claim anew due to the federal habeas statute's general prohibition on second or successive petitions. 28 U. S. C. § 2255(h). As Bourgeois notes, however, that statute permits successive habeas petitions if the first was "inadequate or ineffective to test the legality of [an inmate's] detention." § 2255(e). Bourgeois contends that his first petition was inade-

quate to determine whether he "is" an intellectually disabled person against whom "a sentence of death shall not be carried out," § 3596(c), because his 2011 intellectual disability claim could not be assessed under the materially different standards now prevailing at the time of his execution.

The FDPA's text and structure lend signifcant support to Bourgeois' argument that the FDPA directs courts to look to current standards. Most limitations in the FDPA apply to imposing a death sentence, not implementing it. See, *e. g.*, 18 U. S. C. § 3591 ("[N]o person may be sentenced to death who was less than 18 years of age at the time of the offense"); § 3591(a)(2) (crimes must be committed "intentionally" for a person to be "sentenced to death"); § 3592(a) (listing mitigating factors to be considered "in determining whether a sentence of death is to be imposed"); § 3593 (listing procedural requirements for sentencing hearings). By contrast, the FDPA separately forbids the execution of certain, limited categories of people: the pregnant, the mentally incapacitated, and the intellectually disabled. These prohibitions appear in a section titled "Implementation of a sentence of death," and are phrased in the present tense: "A sentence of death shall not be carried out upon" a woman "while she is pregnant," "a person who, as a result of a mental disability, lacks the mental capacity to understand the death penalty," and "a person who is mentally retarded." §§ 3596(b), (c).

The Government counters that, because intellectual disability, unlike pregnancy and capacity, is a permanent condition evidently present by the time a person reaches the age of majority, a federal prisoner raising an intellectual disability claim needs only one opportunity to prove his case. But while a prisoner's intellectual disability may not change, the medical standards used to assess that disability constantly evolve as the scientifc community's understanding grows. See *Moore*, 581 U. S., at 20, ("Refec ting improved understanding over time, . . . current [clinical] manuals offer the best available description of how mental disorders are expressed and can be recognized by trained clinicians" (internal quotation marks omitted)); see also *Hall* v. *Florida*, 572 U. S. 701, 712–714 (2014).

Bourgeois thus puts forth a strong argument that federal prisoners sentenced to death should be able to f le new habeas petitions if they can show a potentially dispositive change in the diagnostic landscape following their frst petition. The Seventh

Circuit's position, on the other hand, seemingly allows the United States to "carr[y] out" a death sentence upon a person who "is" indisputably intellectually disabled under current diagnostic standards, contrary to the FDPA's express terms. 18 U. S. C. § 3596(c).

Without the beneft of full brief ng and argument, I cannot say for certain whether Bourgeois is correct. But that is not the test for whether this Court should grant certiorari. Bourgeois presents a serious question that is likely to recur. Waiting to grant certiorari may mean permitting the illegal execution of people with intellectual disabilities. I would therefore resolve this open legal issue before sanctioning Bourgeois' execution. I respectfully dissent from the denial of certiorari.

DECEMBER 14, 2020

Affirmed for Absence of Quorum

No. 20–524. YI TAI SHAO *v.* ROBERTS, CHIEF JUSTICE, SUPREME COURT OF THE UNITED STATES, ET AL. C. A. D. C. Because the Court lacks a quorum, 28 U. S. C. § 1, and since the qualifed Justices are of the opinion that the case cannot be heard and determined at the next Term of the Court, the judgment is affr med under 28 U. S. C. § 2109, which provides that under these circumstances "the court shall enter its order affr ming the judgment of the court from which the case was brought for review with the same effect as upon affr mance by an equally divided court." THE CHIEF JUSTICE, JUSTICE THOMAS, JUSTICE BREYER, JUSTICE ALITO, JUSTICE SOTOMAYOR, and JUSTICE KAGAN took no part in the consideration or decision of this petition.

Certiorari Granted—Vacated and Remanded. (See *Shinn* v. *Kayer*, 592 U. S. 111 (2020).)

Certiorari Dismissed

No. 20–5972. SMITH *v.* HAYES, SUPERINTENDENT, STAFFORD CREEK CORRECTIONAL CENTER. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and

the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 20–5974. SANDERS *v.* FOSTER, WARDEN. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). JUSTICE BARRETT took no part in the consideration or decision of this motion and this petition.

No. 20–6008. EVANS *v.* KAHELE. Sup. Ct. Haw. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 20–6016. CHRISTIAN *v.* OKLAHOMA. Ct. Crim. App. Okla. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 20–6302. NGUYEN VU *v.* PENNSYLVANIA. Super. Ct. Pa. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 225 A. 3d 1144.

Miscellaneous Orders

No. 20A37. KELLY-LEPPERT *v.* UNITED STATES. C. A. 8th Cir. Application to recall and stay mandate, addressed to JUSTICE SOTOMAYOR and referred to the Court, denied.

No. 20M44. CARRASCO *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 20M45. RYNN *v.* MCKAY ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 20–5475. CABELLO, AKA PALUMBO *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [592 U. S. 906] denied.

No. 20–5497. SIMPSON *v.* COURT OF COMMON PLEAS OF OHIO, HAMILTON COUNTY, ET AL. Sup. Ct. Ohio. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [592 U. S. 1022] denied.

No. 20–6104. PIDANICK *v.* LAROSA ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until January 4, 2021, within which to pay the docketing fee required by this Court's Rule 38(a).

No. 20–6368. IN RE RAMSEY. Petition for writ of habeas corpus denied.

No. 20–6401. IN RE RICHARDSON. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

Certiorari Denied

No. 19–1144. MCCARRON *v.* DECARLO & SHANLEY, P. C. C. A. 9th Cir. Certiorari denied. Reported below: 786 Fed. Appx. 121.

No. 19–1385. BOX, COMMISSIONER, INDIANA DEPARTMENT OF HEALTH *v.* HENDERSON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 947 F. 3d 482.

No. 19–1402. ZACARIAS ET AL. *v.* JANVEY ET AL.; and
No. 19–1411. RUPERT ET AL. *v.* JANVEY, AS RECEIVER FOR STANFORD RECEIVERSHIP ESTATE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 945 F. 3d 883.

No. 19–1427. TEDARDS ET AL. *v.* DUCEY, GOVERNOR OF ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 951 F. 3d 1041.

No. 19–8597. MCKENZIE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 20–163. LILLEMOE *v.* UNITED STATES; and
No. 20–176. CALDERON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 944 F. 3d 72.

No. 20–326. STEIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 964 F. 3d 1313.

No. 20–347. SPIVEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 956 F. 3d 212.

No. 20–362. COCHLEAR CORP. ET AL. *v.* ALFRED E. MANN FOUNDATION FOR SCIENTIFIC RESEARCH ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 798 Fed. Appx. 643.

No. 20–433. JENKINS *v.* O'ROURKE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 789 Fed. Appx. 495.

No. 20–442. PARSONS *v.* PARSONS. Ct. App. Tenn. Certiorari denied.

No. 20–448. STRICKLAND *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 20–452. S. S. *v.* D. S. ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 225 A. 3d 1188.

No. 20–459. SNYDER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 20–468. XPEDITE SYSTEMS, INC. *v.* FICARA, ACTING DIRECTOR, NEW JERSEY DIVISION OF TAXATION. Super. Ct. N. J., App. Div. Certiorari denied.

No. 20–470. MENDOZA *v.* INSPIRA HEALTH NETWORK, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 807 Fed. Appx. 197.

No. 20–473. AMMAR I. *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 197 Conn. App. 499, 231 A. 3d 1196.

No. 20–474. CMT HOSPITAL HIMA SAN PABLO CAGUAS *v.* SUERO-ALGARIN. C. A. 1st Cir. Certiorari denied. Reported below: 957 F. 3d 30.

No. 20–476. MARTINEZ ET AL. *v.* BASKIN. Sup. Ct. N. J. Certiorari denied.

No. 20–483. KOSHKALDA *v.* SEIKO EPSON CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 463.

No. 20–485. TORRENCE *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 603 S. W. 3d 214.

No. 20–505. RUTTKAMP *v.* BANK OF NEW YORK MELLON, FKA BANK OF NEW YORK. App. Ct. Conn. Certiorari denied.

No. 20–508. LAVERGNE *v.* VAUGHN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 869.

No. 20–521. CITIZENS FOR FAIR REPRESENTATION ET AL. *v.* PADILLA, CALIFORNIA SECRETARY OF STATE. C. A. 9th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 120.

No. 20–606. DREVALEVA *v.* CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS; DREVALEVA *v.* COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT; and DREVALEVA *v.* COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT. Sup. Ct. Cal. Certiorari denied.

No. 20–608. DREVALEVA *v.* CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS; and DREVALEVA *v.* COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT. Sup. Ct. Cal. Certiorari denied.

No. 20–615. MARTINEZ ET AL. *v.* AMERICA'S WHOLESALE LENDER. C. A. 9th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 519.

No. 20–618. ROUTTEN *v.* ROUTTEN. Sup. Ct. N. C. Certiorari denied. Reported below: 374 N. C. 571, 843 S. E. 2d 154.

No. 20–630. BREWER *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 20–657. THOMAS, FOR THE ESTATE OF DUKES *v.* CRAIGE. C. A. 4th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 874.

No. 20–661. CHARLES *v.* SEINFELD ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 803 Fed. Appx. 550.

No. 20–677. LAETTNER *v.* CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE. Sup. Ct. Cal. Certiorari denied.

No. 20–699. SAMMONS *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied.

No. 20–5030. FRANKLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 707.

No. 20–5422. MILLER *v.* DEAL, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 20–5531. HOLMES *v.* BECKER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 785 Fed. Appx. 183.

No. 20–5579. TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 789 Fed. Appx. 655.

No. 20–5963. MURRAY *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 20–5966. MORGAN *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 148.

No. 20–5973. SANTOS *v.* ECKERT, SUPERINTENDENT, WENDE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 20–5979. BAILEY *v.* SHERMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 20–5982. FORTENBERRY *v.* TEXAS BOARD OF PARDONS AND PAROLE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 792 Fed. Appx. 345.

No. 20–5987. TRUESDALE *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 20–5989. KARNOFEL *v.* SUPERIOR WATERPROOFING, INC. Ct. App. Ohio, 11th App. Dist., Trumbull County. Certiorari denied.

No. 20–6000. KIELLY *v.* NEW YORK. County Ct., Broome County, N. Y. Certiorari denied.

No. 20–6011. WILLIAMS *v.* AMERICAN INTERNATIONAL GROUP, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 223.

No. 20–6013. LAFORTE *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 20–6015. MARTIN *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. Sup. Ct. Cal. Certiorari denied.

No. 20–6023. ANDERSON *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 20–6071. DILLINGHAM *v.* SCRUGGS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 787 Fed. Appx. 450.

No. 20–6082. YOKOIS *v.* SHINN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, REHABILITATION AND REENTRY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–6123. HOLCOMBE *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 293 So. 3d 1036.

No. 20–6138. WALKER *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Certiorari denied. Reported below: 2020 Ark. 183.

No. 20–6142. SPAIN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2019 IL App (1st) 163184, 163 N. E. 3d 768.

No. 20–6168. RAHAIM *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 308 So. 3d 594.

No. 20–6184. FULTON *v.* BRITTAIN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 20–6209. SANDERS *v.* WILLIAMS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 238.

No. 20–6241. SMITH *v.* KELLY SERVICES, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 802 Fed. Appx. 728.

No. 20–6247. COX *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 20–6319. MCCULLOUGH *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 20–109. SCHWAB, SECRETARY OF STATE OF KANSAS *v.* FISH ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 957 F. 3d 1105.

No. 20–638. GONZALES *v.* CONOCOPHILLIPS CO. ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 806 Fed. Appx. 289.

No. 20–6010. WOJCIK *v.* COOK COUNTY, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no

part in the consideration or decision of this petition. Reported below: 803 Fed. Appx. 25.

Rehearing Denied

No. 19–1321. In re Wolf et al., 592 U. S. 910;

No. 19–8410. Pinney *v.* Payne, Director, Arkansas Division of Correction, 591 U. S. 1020;

No. 19–8436. In re Young, 592 U. S. 911;

No. 19–8516. Mrazek *v.* Illinois, 592 U. S. 929;

No. 19–8518. Newson *v.* Inch, Secretary, Florida Department of Corrections, et al., 592 U. S. 929;

No. 19–8622. McQueary-Layne *v.* Louisiana State Board of Nursing et al., 592 U. S. 933;

No. 19–8752. Allen *v.* Moore et al., 592 U. S. 940;

No. 19–8758. Li Qin et al. *v.* 99 Cents Only Stores, LLC, et al., 592 U. S. 940;

No. 20–67. Smith *v.* County of Los Angeles, California, et al., 592 U. S. 952;

No. 20–102. Hadsell *v.* Baskin et al., 592 U. S. 1001;

No. 20–172. Ukpai *v.* Continental Automotive Systems US, Inc., 592 U. S. 1002;

No. 20–194. Cox *v.* Texas Workforce Commission et al., 592 U. S. 1025;

No. 20–5068. Li Qin *v.* Kong-Brown et al., 592 U. S. 961;

No. 20–5194. In re Moore, 592 U. S. 910;

No. 20–5368. Oyibo *v.* Huntington Hospital et al., 592 U. S. 1026;

No. 20–5565. Weidrick *v.* Trump, President of the United States, et al., 592 U. S. 1035;

No. 20–5605. In re Koehl, 592 U. S. 910;

No. 20–5671. Ward *v.* Michigan Attorney Grievance Commission, 592 U. S. 1079;

No. 20–5707. Reeves *v.* Esper, Secretary of Defense, et al., 592 U. S. 1029; and

No. 20–5754. Karupaiyan *v.* New York City Department of Education, 592 U. S. 1080. Petitions for rehearing denied.

No. 19–8638. Brzowski *v.* Executive Committee of the United States District Court for the Northern District of Illinois, 592 U. S. 934. Petition for rehearing denied. Justice Barrett took no part in the consideration or decision of this petition.

No. 20–100. BARTH *v.* BERNARDS TOWNSHIP PLANNING BOARD ET AL., 592 U. S. 1020. Petition for rehearing denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

DECEMBER 15, 2020

Certiorari Granted—Vacated and Remanded. (See Nos. 20A95 and 20A105, 592 U. S. 1155).

Miscellaneous Orders

No. 20A95. ROBINSON ET AL. *v.* MURPHY, GOVERNOR OF NEW JERSEY, ET AL. Application for injunctive relief, presented to JUSTICE ALITO, and by him referred to the Court, is treated as a petition for writ of certiorari before judgment, and the petition is granted. The October 2 order of the United States District Court for the District of New Jersey is vacated, and the case is remanded to the United States Court of Appeals for the Third Circuit with instructions to remand to the District Court for further consideration in light of *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 592 U. S. 14 (2020).

No. 20A105. HIGH PLAINS HARVEST CHURCH ET AL. *v.* POLIS, GOVERNOR OF COLORADO, ET AL. Application for injunctive relief, presented to JUSTICE GORSUCH, and by him referred to the Court, is treated as a petition for writ of certiorari before judgment, and the petition is granted. The August 10 order of the United States District Court for the District of Colorado is vacated, and the case is remanded to the United States Court of Appeals for the Tenth Circuit with instructions to remand to the District Court for further consideration in light of *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 592 U. S. 14 (2020).

JUSTICE KAGAN, with whom JUSTICE BREYER and JUSTICE SOTOMAYOR join, dissenting.

I respectfully dissent because this case is moot. High Plains Harvest Church has sought to enjoin Colorado's capacity limits on worship services. But Colorado has lifted all those limits. The State has explained that it took that action in response to this Court's recent decision in *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 592 U. S. 14 (2020) (*per curiam*). See Brief in Opposition 15. Absent our issuing different guidance, there is no reason to think Colorado will reverse course—and so no reason to think Harvest

Church will again face capacity limits. When "subsequent events" thus show that a challenged action cannot "reasonably be expected to recur," a case is well and truly over. *Friends of the Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 189 (2000) (internal quotation marks omitted).

December 16, 2020

Certiorari Granted

No. 20–297. TransUnion LLC *v.* Ramirez. C. A. 9th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 951 F. 3d 1008.

No. 20–512. National Collegiate Athletic Assn. *v.* Alston et al.; and

No. 20–520. American Athletic Conference et al. *v.* Alston et al. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour is allotted for oral argument. Reported below: 958 F. 3d 1239.

December 17, 2020

Miscellaneous Order

No. 20A96. Danville Christian Academy, Inc., et al. *v.* Beshear, Governor of Kentucky. On November 18, the Governor of Kentucky issued a temporary school-closing order that effectively closes K–12 schools for in-person instruction until and through the upcoming holiday break, which starts Friday, December 18, for many Kentucky schools. All schools in Kentucky may reopen after the holiday break, on January 4. A religious private school and the attorney general of Kentucky sought a preliminary injunction against the school-closing order as applied to religious schools. The United States District Court for the Eastern District of Kentucky granted a preliminary injunction, but the Sixth Circuit then stayed that injunction pending appeal.

The Governor's school-closing order effectively expires this week or shortly thereafter, and there is no indication that it will be renewed. The order applies equally to secular schools and religious schools, but the applicants argue that the order treats schools (including religious schools) worse than restaurants, bars, and gyms, for example, which remain open. For the latter reason, applicants argue that the order is not neutral and generally applicable for purposes of *Employment Div., Dept. of Human*

Resources of Ore. v. *Smith*, 494 U. S. 872 (1990). Several *amici* supporting applicants argue in the alternative that even if the order is neutral and generally applicable because it treats religious schools the same as secular schools, *Smith* still requires heightened scrutiny when the "application of a neutral, generally applicable law to religiously motivated action" also implicates "the right of parents" "to direct the education of their children." *Id.*, at 881 (citing *Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925); *Wisconsin* v. *Yoder*, 406 U. S. 205 (1972)). Applicants did not squarely raise that alternative *Smith* argument in the District Court, the Sixth Circuit, or this Court.

Under all of the circumstances, especially the timing and the impending expiration of the order, we deny the application without prejudice to applicants or other parties seeking a new preliminary injunction if the Governor issues a school-closing order that applies in the new year.

JUSTICE ALITO, with whom JUSTICE GORSUCH joins, dissenting.

For the reasons explained in JUSTICE GORSUCH's dissent, *post*, p. 1158, I would vacate the Sixth Circuit's stay of the preliminary injunction issued by the District Court and remand for further consideration in light of the proper legal standards. While I do not agree with the Court's denial of the applicants' request for emergency relief, no one should misinterpret that denial as signifying approval of the Sixth Circuit's decision. As I understand this Court's order, it is based primarily on timing. At this point, just a few school days remain before the beginning of many schools' holiday break, and the executive order in question will expire before classes would normally begin next year. The Court is therefore reluctant to grant relief that, at this point, would have little practical effect.

I understand that reluctance, but in my judgment, it is unfair to deny relief on this ground since this timing is in no way the applicants' fault. They filed this action on November 20, 2020, just two days after the issuance of the Governor's executive order. And when, on November 29, the Sixth Circuit granted a stay of the order that would have allowed classes to resume, the applicants sought relief in this Court just two days later, on December 1. It is hard to see how they could have proceeded more expeditiously.

As things now stand, this action remains on the docket of the District Court. If the Governor does not allow classes to begin after the turn of the year, the applicants can file a new request for a preliminary injunction, and if the lower courts do not provide relief, the applicants may of course return to this Court.

JUSTICE GORSUCH, with whom JUSTICE ALITO joins, dissenting.

Four weeks ago, the Governor of Kentucky issued two executive orders. One (the School EO) closed all elementary, middle, and high schools—including religious ones—for in-person learning, while leaving preschools, colleges, and universities untouched. The other (the Business EO) permitted virtually all other in-person activities to continue with only capacity restrictions. Movie theaters, indoor wedding venues, bowling alleys, and gaming halls remained open for business.

Religious schools challenged these decrees as a violation of the First Amendment, and the district court agreed with them. The court "wonder[ed] why" people "would be free to attend a lecture, go to work, or attend a concert, but not attend socially distanced chapel in school or pray together in a classroom that is following strict safety procedures and social distancing." *Danville Christian Academy, Inc.* v. *Beshear*, 503 F. Supp. 3d 516, 524 (ED Ky. 2020). In the end, the court held that the Governor's EOs discriminated against the free exercise of religion and enjoined their enforcement against religious schools, so long as those schools followed all applicable sanitization and social distancing protocols.

The Sixth Circuit stayed the district court's injunction. *Commonwealth of Kentucky, Atty. Gen. Cameron* v. *Beshear*, 981 F. 3d 505 (2020). It did so by considering the School EO in isolation and ignoring the many activities permitted under the Business EO. Looking only to the School EO, the court explained, religious exercises were subject to "neutral" and "generally applicable" rules. *Id.*, at 510. After all, the School EO treated religious and secular schools the same. Accordingly, the circuit concluded, the School EO triggered only rational-basis review and easily passed muster under the terms of *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872 (1990).

Whatever the ultimate merits of this case, the Sixth Circuit's decisional path was fawed in at least two respects. First, the

court had an obligation to address the plaintiffs' argument that the two EOs, considered together, resulted in unconstitutional discrimination against religion. Whether discrimination is spread across two orders or embodied in one makes no difference; the Constitution cannot be evaded merely by multiplying the decrees. See *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520, 539–540 (1993). Second, under this Court's precedents, even neutral and generally applicable laws are subject to strict scrutiny where (as here) a plaintiff presents a "hybrid" claim—meaning a claim involving the violation of the right to free exercise *and* another right, such as the right of parents "to direct the education of their children." *Smith*, 494 U. S., at 881.

Perhaps the Sixth Circuit's errors are understandable. *Smith*'s rules about how to determine when laws are "neutral" and "generally applicable" have long proved perplexing. See, *e. g.*, Laycock & Collis, Generally Applicable Law and the Free Exercise of Religion, 95 Neb. L. Rev. 1, 5–6 (2016). It is far from clear, too, why the First Amendment's right to free exercise should be treated less favorably than other rights, or ought to depend on the presence of another right before strict scrutiny applies. See, *e. g.*, *Kennedy* v. *Bremerton School Dist.*, 586 U. S. 1130, 1133 (2019) (ALITO, J., statement respecting denial of certiorari); McConnell, Free Exercise Revisionism and the *Smith* Decision, 57 U. Chi. L. Rev. 1109, 1121–1122 (1990).

Rather than vacate and remand in light of these problems, today's majority denies relief. On the merits, the majority suggests the applicants may not have "squarely" advanced the second argument about "hybrid" rights. But however that may be, no one doubts the applicants have always pressed the frst argument—that the Governor's two EOs together discriminate against religion. The Sixth Circuit's failure to engage that argument is alone suffcient grounds for vacatur. The majority disputes none of this but instead turns to an assessment of the equities. Whatever the problems with the Sixth Circuit's order, it says, we should let this one go because this case is old news; winter break is coming soon, and the Governor's decrees will expire in a few weeks, on January 4.

I would assess the equities differently. The EOs remain in force, the dispute over them remains live, and the decision allowing them to stand is fawed. Nothing prevents us from saying so; no one attempts to suggest this case is moot; and the applicants are entitled to a fair assessment of their rights under accu-

rate legal rules. The plaintiffs proceeded expeditiously in challenging the EOs; they have hardly sat on their rights. Nor should a Governor be able to evade judicial review by issuing short-term edicts and then urging us to overlook their problems only because one edict is about to expire while the next has yet to arrive. Come January 4, a new school semester will be about to start, and the Governor has expressly told us that he reserves the right to issue more decrees like these if and when religious schools try to resume holding classes. Rather than telling the parties to renew their fght in a month, asking the Sixth Circuit to resolve the case now, under accurate legal rules, would be better for everyone—from the parents who might have to miss work and stay home should decrees like these be upheld, to the state public health offcia ls who might have to plan for school if they are not.

Courts have a broader equity at stake here too. In their struggle to respond to the current pandemic, executive offcia ls have sometimes treated constitutional rights with suspicion. In Kentucky, state troopers seeking to enforce gubernatorial orders even reprimanded and recorded the license plate numbers of worshippers who attended an Easter church service, some of whom were merely sitting in their cars listening to the service over a loudspeaker. *Maryville Baptist Church, Inc.* v. *Beshear*, 977 F. 3d 561, 563–564 (CA6 2020) (*per curiam*). Recently, this Court made clear it would no longer tolerate such departures from the Constitution. See *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 592 U. S. 14, 17–20 (2020) (*per curiam*). We did so in a case where the challenged edict had arguably expired, explaining that our action remained appropriate given the Governor's claim that he could revive his unconstitutional decree anytime. *Id.*, at 20. That was the proper course there, as I believe it is here. I would not leave in place yet another potentially unconstitutional decree, even for the next few weeks.

For these reasons, I respectfully dissent. I would grant the application, vacate the Sixth Circuit's stay, and remand the matter for further consideration under the proper legal standards.

DECEMBER 28, 2020

Vacated and Remanded on Appeal

No. 20–561. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* CITY OF SAN JOSE, CALIFORNIA, ET AL. Appeal from D. C. N. D. Cal. Judgment vacated, and case remanded with

instructions to dismiss for lack of jurisdiction. See *Trump* v. *New York*, 592 U. S. 125 (2020) (*per curiam*).

JUSTICE BREYER, joined by JUSTICE SOTOMAYOR and JUSTICE KAGAN, dissents for the reasons stated in *Trump* v. *New York*, 592 U. S. 125, 134 (2020) (BREYER, J., dissenting).

No. 20–662. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* USECHE ET AL. Appeal from D. C. Md. Judgment vacated, and case remanded with instructions to dismiss for lack of jurisdiction. See *Trump* v. *New York*, 592 U. S. 125 (2020) (*per curiam*).

JUSTICE BREYER, joined by JUSTICE SOTOMAYOR and JUSTICE KAGAN, dissents for the reasons stated in *Trump* v. *New York*, 592 U. S. 125, 134 (2020) (BREYER, J., dissenting).

DECEMBER 30, 2020

Miscellaneous Order

No. 20A108. LOUISIANA *v.* HILL. Sup. Ct. La. Application for stay, presented to JUSTICE ALITO, and by him referred to the Court, denied.

JANUARY 5, 2021

Dismissal Under Rule 46

No. 20–6585. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46.

JANUARY 7, 2021

Dismissal Under Rule 46

No. 20–743. DISH NETWORK L. L. C. *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 46.

Miscellaneous Order

No. 20A115. GOHMERT ET AL. *v.* PENCE, VICE PRESIDENT OF THE UNITED STATES. Application for interim relief, presented to JUSTICE ALITO, and by him referred to the Court, denied.

JANUARY 8, 2021

Miscellaneous Orders

No. 19–1189. BP P.L.C. ET AL. *v.* MAYOR AND CITY COUNCIL OF BALTIMORE. C. A. 4th Cir. [Certiorari granted, 591 U. S.

1080.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. JUSTICE ALITO took no part in the consideration or decision of this motion

No. 19–1231. FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* PROMETHEUS RADIO PROJECT ET AL.; and

No. 19–1241. NATIONAL ASSOCIATION OF BROADCASTERS ET AL. *v.* PROMETHEUS RADIO PROJECT ET AL. C. A. 3d Cir. [Certiorari granted, 591 U. S. 1080.] Motion of the Acting Solicitor General for divided argument granted.

Certiorari Granted

No. 20–255. MAHANOY AREA SCHOOL DISTRICT *v.* B. L., A MINOR, BY AND THROUGH HER FATHER, LEVY, ET AL. C. A. 3d Cir. Certiorari granted. Reported below: 964 F. 3d 170.

No. 20–315. SANCHEZ ET UX. *v.* WOLF, ACTING SECRETARY OF HOMELAND SECURITY, ET AL. C. A. 3d Cir. Certiorari granted. Reported below: 967 F. 3d 242.

No. 20–334. CITY OF SAN ANTONIO, TEXAS, ON BEHALF OF ITSELF AND ALL OTHER SIMILARLY SITUATED TEXAS MUNICIPALITIES *v.* HOTELS.COM, L. P., ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 959 F. 3d 159.

No. 20–382. TERRITORY OF GUAM *v.* UNITED STATES. C. A. D. C. Cir. Certiorari granted. Reported below: 950 F. 3d 104.

No. 20–440. MINERVA SURGICAL, INC. *v.* HOLOGIC, INC., ET AL. C. A. Fed. Cir. Certiorari granted. Reported below: 957 F. 3d 1256.

No. 19–251. AMERICANS FOR PROSPERITY FOUNDATION *v.* BECERRA, ATTORNEY GENERAL OF CALIFORNIA; and

No. 19–255. THOMAS MORE LAW CENTER *v.* BECERRA, ATTORNEY GENERAL OF CALIFORNIA. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour is allotted for oral argument. Reported below: 903 F. 3d 1000.

No. 19–8709. GREER *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 798 Fed. Appx. 483.

No. 20–437. UNITED STATES *v.* PALOMAR-SANTIAGO. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 813 Fed. Appx. 282.

No. 20–444. UNITED STATES *v.* GARY. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 954 F. 3d 194.

No. 20–472. HOLLYFRONTIER CHEYENNE REFINING, LLC, ET AL. *v.* RENEWABLE FUELS ASSN. ET AL. C. A. 10th Cir. Motions of American Fuel & Petrochemical Manufacturers and Countrymark Refining and Logistics, LLC, for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 948 F. 3d 1206.

No. 20–543. MNUCHIN, SECRETARY OF THE TREASURY *v.* CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION ET AL.; and

No. 20–544. ALASKA NATIVE VILLAGE CORP. ASSN., INC., ET AL. *v.* CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION ET AL. C. A. D. C. Cir. Motions of United States Senator Lisa Murkowski et al. for leave to file briefs as *amici curiae* granted. Certiorari granted, cases consolidated, and a total of one hour is allotted for oral argument. Reported below: 976 F. 3d 15.

No. 20–5904. TERRY *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 828 Fed. Appx. 563.

JANUARY 11, 2021

Certiorari Granted—Vacated and Remanded

No. 20–234. IMMIGRATION AND CUSTOMS ENFORCEMENT ET AL. *v.* PADILLA ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Department of Homeland Security* v. *Thuraissigiam*, 591 U. S. 103 (2020). Reported below: 953 F. 3d 1134.

No. 20–306. OLAN ET AL. *v.* UNITED STATES; and

No. 20–5649. BLASZCZAK *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner in No. 20–5649 for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and

cases remanded for further consideration in light of *Kelly* v. *United States*, 590 U. S. 391 (2020). Reported below: 947 F. 3d 19.

No. 20–5123. HAYES *v.* LOUISIANA. Ct. App. La., 4th Cir. Reported below: 2017–0789 (La. App. 4 Cir. 3/27/19); and

No. 20–5363. JONES *v.* LOUISIANA. Ct. App. La., 4th Cir. Reported below: 2018–0973 (La. App. 4 Cir. 2/27/19). Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Ramos* v. *Louisiana*, 590 U. S. 83 (2020).

Certiorari Dismissed

No. 20–6031. TALLEY *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 20–6056. JONES *v.* CAPIRO. Sup. Ct. Del. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 238 A. 3d 848.

No. 20–6114. SHONG-CHING TONG *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 20–6128. LIVIZ *v.* SUPREME JUDICIAL COURT OF MASSACHUSETTS. Sup. Jud. Ct. Mass. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 484 Mass. 1015, 140 N. E. 3d 909.

No. 20–6145. KELLY *v.* BISHOP, WARDEN, ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 812 Fed. Appx. 167.

No. 20–6171. BAPTISTE *v.* KOENIG, WARDEN. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 20–6217. RANGEL *v.* MEYER ET AL. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied,

and certiorari dismissed. See this Court's Rule 39.8. Reported below: 807 Fed. Appx. 567.

No. 20–6345. DeCarlo *v.* United States. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari before judgment dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 20–6365. Crosby *v.* True, Warden. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Justice Gorsuch took no part in the consideration or decision of this motion and this petition. Reported below: 830 Fed. Appx. 571.

No. 20–6366. Riley *v.* Delaware. Sup. Ct. Del. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). Justice Alito took no part in the consideration or decision of this motion and this petition. Reported below: 238 A. 3d 848.

Miscellaneous Orders

No. 20A97. Vinkov *v.* United States District Court for the Central District of California. Application for stay, addressed to Justice Thomas and referred to the Court, denied.

No. 20M46. Stewart *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division, et al. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 19–1434. United States *v.* Arthrex, Inc., et al.;

No. 19–1452. Smith & Nephew, Inc., et al. *v.* Arthrex, Inc., et al.; and

No. 19–1458. ARTHREX, INC. *v.* SMITH & NEPHEW, INC., ET AL. C. A. Fed. Cir. [Certiorari granted, 592 U. S. 1000.] Motion of the Acting Solicitor General for divided argument granted.

No. 19–1442. CARR ET AL. *v.* SAUL, COMMISSIONER OF SOCIAL SECURITY. C. A. 10th Cir.; and

No. 20–105. DAVIS ET AL. *v.* SAUL, COMMISSIONER OF SOCIAL SECURITY; and HILLIARD *v.* SAUL, COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. [Certiorari granted, 592 U. S. 1085 and 1086.] Motions of petitioners to dispense with printing joint appendix granted.

No. 20–37. AZAR, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. *v.* GRESHAM ET AL.; and AZAR, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. *v.* PHILBRICK ET AL.; and

No. 20–38. ARKANSAS *v.* GRESHAM ET AL. C. A. D. C. Cir. [Certiorari granted, 592 U. S. 1121.] Motion of the Acting Solicitor General to dispense with printing joint appendix granted.

No. 20–402. RICHARDSON ET AL., INDIVIDUALLY AND AS PARENTS AND NEXT FRIENDS OF L *v.* OMAHA SCHOOL DISTRICT. C. A. 8th Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 20–512. NATIONAL COLLEGIATE ATHLETIC ASSN. *v.* ALSTON ET AL.; and

No. 20–520. AMERICAN ATHLETIC CONFERENCE ET AL. *v.* ALSTON ET AL. C. A. 9th Cir. [Certiorari granted, 592 U. S. 1156.] Motion of petitioners to dispense with printing joint appendix granted.

No. 20–639. CALVARY CHAPEL DAYTON VALLEY *v.* SISOLAK, GOVERNOR OF NEVADA, ET AL. C. A. 9th Cir. Respondents are directed to file a response to the petition on or before noon, Tuesday, January 19, 2021. Petitioner may file a reply brief on or before noon, Thursday, January 21, 2021.

No. 20–799. WOOD *v.* RAFFENSPERGER, GEORGIA SECRETARY OF STATE, ET AL. C. A. 11th Cir.;

No. 20–809. WARD *v.* JACKSON ET AL. Sup. Ct. Ariz.;

No. 20–810. KELLY, UNITED STATES CONGRESSMAN, ET AL. *v.* PENNSYLVANIA ET AL. Sup. Ct. Pa.;

No. 20–815. KING ET AL. *v.* WHITMER, GOVERNOR OF MICHIGAN, ET AL. C. A. 6th Cir.;

No. 20–845. DONALD J. TRUMP FOR PRESIDENT, INC. *v.* BOOCKVAR, SECRETARY OF PENNSYLVANIA, ET AL.; DONALD J. TRUMP FOR PRESIDENT, INC. *v.* PHILADELPHIA COUNTY BOARD OF ELECTIONS ET AL.; and DONALD J. TRUMP FOR PRESIDENT, INC. *v.* ELKIN ET AL. Sup. Ct. Pa.;

No. 20–882. TRUMP ET AL. *v.* BIDEN ET AL. Sup. Ct. Wis.; and

No. 20–883. TRUMP *v.* WISCONSIN ELECTIONS COMMISSION ET AL. C. A. 7th Cir. Motions of petitioners to expedite consideration of the petitions for writs of certiorari denied.

No. 20–816. IN RE PEARSON ET AL. Motion of petitioners to expedite consideration of the petition for writ of mandamus denied.

No. 20–5566. WILSON *v.* FLORIDA ET AL. Dist. Ct. App. Fla., 4th Dist. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [592 U. S. 1071] denied.

No. 20–5638. CATERBONE *v.* LANCASTER COUNTY PRISON ET AL. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [592 U. S. 1083] denied.

No. 20–5659. ROBLES *v.* WILKIE, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [592 U. S. 1022] denied.

No. 20–6093. ABUTALEB *v.* ABUTALEB. App. Ct. Ill., 3d Dist.;

No. 20–6152. LUQUIN-CORONEL *v.* ROSEN, ACTING ATTORNEY GENERAL. C. A. 6th Cir.;

No. 20–6234. MOYNIHAN *v.* WEST CHESTER AREA SCHOOL DISTRICT ET AL. C. A. 3d Cir.; and

No. 20–6283. BROWNLEE *v.* CAPOZZA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE. C. A. 3d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until February 1, 2021, within which to pay the docketing fees required by this Court's Rule 38(a).

No. 20–6421. IN RE RICHARDS;

No. 20–6587. IN RE TANAMOR-STEFFAN;

No. 20–6616. IN RE ROMAIN; and

No. 20–6634. IN RE CHADES. Petitions for writs of habeas corpus denied.

No. 20–6536. IN RE RAGHUBIR. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 20–626. IN RE HEGHMANN;
No. 20–726. IN RE MICHAEL;
No. 20–760. IN RE DEMERY; and
No. 20–6270. IN RE HOWELL. Petitions for writs of mandamus denied.

No. 20–6287. IN RE AKEL. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

No. 20–6119. IN RE WOODS. Petition for writ of mandamus and/or prohibition denied.

No. 20–6164. IN RE ROMAIN. Petition for writ of prohibition denied.

Certiorari Denied

No. 19–1143. FMC CORP. *v.* SHOSHONE-BANNOCK TRIBES. C. A. 9th Cir. Certiorari denied. Reported below: 942 Fed. Appx. 916.

No. 19–1363. URRUTIA ROBLES *v.* ROSEN, ACTING ATTORNEY GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 940 F. 3d 420.

No. 19–1441. CITY OF AUSTIN, TEXAS *v.* PAXTON, ATTORNEY GENERAL OF TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 943 F. 3d 993.

No. 19–1476. VANTAGE ENERGY SERVICES, INC., ET AL. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 5th Cir. Certiorari denied. Reported below: 954 F. 3d 749.

No. 19–8650. CAMPBELL *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 243 Md. App. 507, 221 A. 3d 1022.

No. 19–8661. SANTOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 947 F. 3d 711.

No. 19–8668. WHITESIDE *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2019 Ark. 349, 588 S. W. 3d 720.

No. 19–8799. JOHNMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 948 F. 3d 612.

No. 19–8838. MEDINA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 223.

No. 19–8898. EFTHIMIATOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 799 Fed. Appx. 75.

No. 20–47. LEBAMOFF ENTERPRISES, INC., ET AL. *v.* WHITMER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 956 F. 3d 863.

No. 20–132. MOODSTERS CO. *v.* WALT DISNEY CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 958 F. 3d 767.

No. 20–139. IWAI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 3d 1141.

No. 20–150. THERMOLIFE INTERNATIONAL LLC *v.* IANCU, UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 796 Fed. Appx. 726.

No. 20–202. MASSIE *v.* MENA. C. A. 9th Cir. Certiorari denied. Reported below: 795 Fed. Appx. 539.

No. 20–216. BOSE *v.* DE LA SALUD BEA ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 947 F. 3d 983.

No. 20–217. BALTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 788 Fed. Appx. 245.

No. 20–239. SOLORZANO-GUERRERO *v.* ROSEN, ACTING ATTORNEY GENERAL. C. A. 8th Cir. Certiorari denied.

No. 20–244. FAYED *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 9 Cal. 5th 147, 460 P. 3d 1149.

No. 20–250. POOLE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 297 So. 3d 487.

No. 20–256. JORDAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 952 F. 3d 160.

No. 20–272. MARYLAND ET AL. *v.* ROGERS. Ct. App. Md. Certiorari denied. Reported below: 468 Md. 1, 226 A. 3d 261.

No. 20–293. BRISTOL-MYERS SQUIBB CO. ET AL. *v.* NEW MEXICO EX REL. BALDERAS, ATTORNEY GENERAL. Ct. App. N. M. Certiorari denied. Reported below: 2019–NMCA–016, 436 P. 3d 724.

No. 20–301. HENNIS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 79 M. J. 370.

No. 20–304. WORLD PROGRAMMING LTD. *v.* SAS INSTITUTE, INC. C. A. 4th Cir. Certiorari denied. Reported below: 952 F. 3d 513.

No. 20–332. HURCHALLA *v.* LAKE POINT PHASE I, LLC, ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 278 So. 3d 58.

No. 20–333. BOZEMAN FINANCIAL LLC *v.* FEDERAL RESERVE BANK OF ATLANTA ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 955 F. 3d 971.

No. 20–351. CAREY *v.* THROWE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 957 F. 3d 468.

No. 20–360. SHINN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. *v.* JENSEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 949 F. 3d 443.

No. 20–361. COURTNEY ET AL. *v.* DANNER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 558.

No. 20–365. JACK DANIEL'S PROPERTIES, INC. *v.* VIP PRODUCTS LLC. C. A. 9th Cir. Certiorari denied. Reported below: 953 F. 3d 1170.

No. 20–370. BUGARENKO *v.* ROSEN, ACTING ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 798 Fed. Appx. 741.

No. 20–378. North Cypress Medical Center Operating Co., Ltd., et al. *v.* Cigna Healthcare et al. C. A. 5th Cir. Certiorari denied. Reported below: 952 F. 3d 708.

No. 20–407. Massenburg *v.* Innovative Talent Solutions, Inc., et al. C. A. 4th Cir. Certiorari denied.

No. 20–410. NTCH, Inc. *v.* Federal Communications Commission et al. C. A. D. C. Cir. Certiorari denied. Reported below: 950 F. 3d 871.

No. 20–423. Garrott *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 905.

No. 20–426. Huntress et al. *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 810 Fed. Appx. 74.

No. 20–441. Minnesota Sands, LLC *v.* County of Winona, Minnesota. Sup. Ct. Minn. Certiorari denied.

No. 20–456. Elder *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 805 Fed. Appx. 19.

No. 20–457. MarketGraphics Research Group, Inc. *v.* Berge. C. A. 6th Cir. Certiorari denied. Reported below: 953 F. 3d 907.

No. 20–464. Rosemond *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 958 F. 3d 111.

No. 20–471. Y. W. *v.* Aufiero et al. C. A. 3d Cir. Certiorari denied.

No. 20–488. Bhargava *v.* Mortgage Electronic Registration Systems, Inc. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 20–490. Freeman *v.* Wainwright, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 959 F. 3d 226.

No. 20–491. Perez Hernandez *v.* Texas. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 20–495. Stanley *v.* ExpressJet Airlines, Inc. C. A. 6th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 351.

No. 20–496. Weinberg *v.* Bort. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 294 So. 3d 898.

No. 20–498. GARCIA ET AL. *v.* BLEVINS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 957 F. 3d 596.

No. 20–502. MASCARA, SHERIFF OF ST. LUCIE COUNTY, FLORIDA, ET AL. *v.* BRYANT, AS PERSONAL REPRESENTATIVE THE ESTATE OF HILL. C. A. 11th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 881.

No. 20–503. KURBANOV *v.* UMG RECORDINGS, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 963 F. 3d 344.

No. 20–506. VINKOV *v.* SMITH ET AL. (two judgments). Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 20–509. MONALIM ET UX. *v.* HAWAIIUSA FEDERAL CREDIT UNION. Sup. Ct. Haw. Certiorari denied. Reported below: 147 Haw. 33, 464 P. 3d 821.

No. 20–511. GEORGE *v.* TERRITORY OF THE VIRGIN ISLANDS. Sup. Ct. V. I. Certiorari denied. Reported below: 69 V. I. 553.

No. 20–515. PHILADELPHIA INDEMNITY INSURANCE CO. *v.* GATEWAY HOSPITALITY GROUP INC. ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 400 Mont. 80, 464 P. 3d 44.

No. 20–516. MCCOY *v.* OUEDRAOGO. Sup. Ct. Pa. Certiorari denied.

No. 20–522. PORTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 959 F. 3d 800.

No. 20–530. BURBANK *v.* CONNECTICUT OFFICE OF CHIEF DISCIPLINARY COUNSEL. App. Ct. Conn. Certiorari denied. Reported below: 195 Conn. App. 416, 224 A. 3d 1185.

No. 20–532. XIAOHUA HUANG *v.* HUAWEI TECHNOLOGY CO., LTD. C. A. Fed. Cir. Certiorari denied. Reported below: 795 Fed. Appx. 848.

No. 20–538. RENTBERRY, INC., ET AL. *v.* CITY OF SEATTLE, WASHINGTON. C. A. 9th Cir. Certiorari denied. Reported below: 814 Fed. Appx. 309.

No. 20–540. HEGLAND ET AL. *v.* HANNA. C. A. 9th Cir. Certiorari denied.

No. 20–541. MacDonald *v.* Kempinsky et al. Ct. App. Cal., 2d App. Dist., Div. 3. Certiorari denied.

No. 20–545. Terrell *v.* Renner. Sup. Ct. App. W. Va. Certiorari denied.

No. 20–556. Special Services Bureau, Inc., dba Regional Bonding Co. *v.* Circuit Court of West Virginia, Berkeley County. Sup. Ct. App. W. Va. Certiorari denied.

No. 20–557. Aguirre-Chavez *v.* Rosen, Acting Attorney General. C. A. 5th Cir. Certiorari denied.

No. 20–560. Sullivan et al. *v.* Nassau County Interim Finance Authority et al. C. A. 2d Cir. Certiorari denied. Reported below: 959 F. 3d 54.

No. 20–562. Yearwood et al. *v.* Department of the Interior et al. C. A. 5th Cir. Certiorari denied. Reported below: 960 F. 3d 223.

No. 20–571. Weisshaus *v.* Port Authority of New York and New Jersey. C. A. 2d Cir. Certiorari denied. Reported below: 814 Fed. Appx. 643.

No. 20–582. Kifayatuthelezi, aka Hayes *v.* South Carolina Department of Corrections et al. C. A. 4th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 229.

No. 20–583. Dailey *v.* Attorney Grievance Commission of Maryland. Ct. App. Md. Certiorari denied.

No. 20–588. Wainwright, Warden *v.* Sexton. C. A. 6th Cir. Certiorari denied. Reported below: 968 F. 3d 607.

No. 20–590. Pankoe *v.* Pankoe. Super. Ct. Pa. Certiorari denied. Reported below: 222 A. 3d 443.

No. 20–592. Hallmark Care Services, Inc., et al. *v.* Superior Court of Washington, Spokane County, et al. C. A. 9th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 424.

No. 20–593. Hallmark Care Services, Inc., et al. *v.* Superior Court of Washington, Spokane County, et al. C. A. 9th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 435.

No. 20–594. BERRY *v.* STATE BAR OF ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 20–596. SCOTT *v.* CITY OF ST. PETERSBURG, FLORIDA, ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 308 So. 3d 584.

No. 20–597. JEFFERY *v.* BROOKS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 747.

No. 20–598. KRATZ *v.* NATIONSTAR MORTGAGE, LLC. Super. Ct. Pa. Certiorari denied.

No. 20–600. SEVY *v.* BARACH. C. A. 6th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 58.

No. 20–607. DREVALEVA *v.* ALAMEDA HEALTH SYSTEM. Ct. App. Cal., 1st App. Dist., Div. 4. Certiorari denied.

No. 20–610. HOWLAND *v.* KELLY ET AL. C. A. 2d Cir. Certiorari denied.

No. 20–611. DOYLE *v.* VIGILANTE. C. A. 3d Cir. Certiorari denied. Reported below: 803 Fed. Appx. 628.

No. 20–614. KERR *v.* KERR. Sup. Ct. Mont. Certiorari denied. Reported below: 400 Mont. 561, 464 P. 3d 1012.

No. 20–616. DURR *v.* DEPARTMENT OF THE ARMY ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 828 Fed. Appx. 723.

No. 20–617. CALIFORNIA VIRTUAL ACADEMIES *v.* CALIFORNIA PUBLIC EMPLOYMENT RELATIONS BOARD. Ct. App. Cal., 2d App. Dist., Div. 6. Certiorari denied.

No. 20–619. R. S. ET AL., INDIVIDUALLY AND ON BEHALF OF THEIR SON, A. S. *v.* BOARD OF EDUCATION SHENENDEHOWA CENTRAL SCHOOL DISTRICT ET AL. C. A. 2d Cir. Certiorari denied.

No. 20–620. WILLIAMS ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 328.

No. 20–623. GURVEY *v.* COWAN, LIEBOWITZ & LATMAN, P. C., ET AL. C. A. Fed. Cir. Certiorari denied.

No. 20–624. GOLDEN *v.* APPLE INC. C. A. Fed. Cir. Certiorari denied. Reported below: 819 Fed. Appx. 930.

No. 20–625. FINDLER *v.* WRAY, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, ET AL. C. A. 6th Cir. Certiorari denied.

No. 20–627. E. H. *v.* FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, DIVISION OF LICENSING. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 300 So. 3d 162.

No. 20–631. HOLOGIC, INC., ET AL. *v.* MINERVA SURGICAL, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 957 F. 3d 1256.

No. 20–632. FYK *v.* FACEBOOK, INC. C. A. 9th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 597.

No. 20–635. SOO LINE RAILROAD CO., DBA CANADIAN PACIFIC *v.* CONSOLIDATED RAIL CORPORATION ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 965 F. 3d 596.

No. 20–640. WELSH GOVERNMENT *v.* PABLO STAR LTD. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 961 F. 3d 555.

No. 20–644. PENDERGRASS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 20–646. BAGGOTT *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 301 So. 3d 230.

No. 20–647. AZALA *v.* ROSEN, ACTING ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 804 Fed. Appx. 51.

No. 20–650. STADTWERKE FRANKFURT AM MAIN HOLDING GMBH *v.* RWE TRADING AMERICAS INC. C. A. 2d Cir. Certiorari denied. Reported below: 813 Fed. Appx. 6.

No. 20–651. COOK CHILDREN'S MEDICAL CENTER *v.* T. L., A MINOR, ET AL. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 607 S. W. 3d 9.

No. 20–652. GEORGIOU *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 20–653. HAMILTON *v.* CITY OF HAYTI, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 948 F. 3d 921.

No. 20–654. RIPA *v.* STONY BROOK UNIVERSITY. C. A. 2d Cir. Certiorari denied. Reported below: 808 Fed. Appx. 50.

No. 20–655. XIU JIAN SUN *v.* LAWRENCE, ASSISTANT UNITED STATES ATTORNEY, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 20–656. KINGHORN ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 810 Fed. Appx. 879.

No. 20–663. CULPEPPER *v.* PROVECTUS BIOPHARMACEUTICALS, INC. Ct. App. Tenn. Certiorari denied.

No. 20–664. JOUKOV *v.* OFFICE OF THE STATE ATTORNEY FOR THE SECOND JUDICIAL CIRCUIT OF FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 296 So. 3d 902.

No. 20–670. DILLARD ET AL. *v.* O'KELLEY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 961 F. 3d 1048.

No. 20–673. FRATERNAL ORDER OF POLICE, CHICAGO LODGE NO. 7 *v.* CITY OF CHICAGO, ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 2020 IL 124831, 181 N. E. 3d 18.

No. 20–675. LONE STAR SILICON INNOVATIONS LLC *v.* IANCU, UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 809 Fed. Appx. 773.

No. 20–680. LODER *v.* ICEMAKERS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 698.

No. 20–681. LARKIN ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. D. C. Cir. Certiorari denied.

No. 20–682. KOLODZIEJCZYK *v.* ROSEN, ACTING ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 804 Fed. Appx. 14.

No. 20–684. TAGGER *v.* STRAUSS GROUP LTD. C. A. 2d Cir. Certiorari denied. Reported below: 951 F. 3d 124.

No. 20–686. SHOCK *v.* ARKANSAS. Ct. App. Ark. Certiorari denied. Reported below: 2020 Ark. App. 165, 596 S. W. 3d 580.

No. 20–687. ALLEN *v.* UNITED STATES (three judgments). C. A. Fed. Cir. Certiorari denied. Reported below: 824 Fed. Appx. 1013 (frst judgment).

No. 20–689. FOSTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 20–692. WEBSTER ET AL. *v.* FRESENIUS MEDICAL CARE HOLDINGS, INC., AKA FRESENIUS MEDICAL CARE NORTH AMERICA. C. A. 6th Cir. Certiorari denied.

No. 20–693. FRIDMAN ET AL. *v.* ORBIS BUSINESS INTELLIGENCE LTD. ET AL. Ct. App. D. C. Certiorari denied. Reported below: 229 A. 3d 494.

No. 20–698. HEADMAN *v.* HANSEN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 315.

No. 20–703. KINNEY ET AL. *v.* URBAN HOUSING DEVELOPMENT, LLC. Ct. App. Ore. Certiorari denied.

No. 20–705. JAYE *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 781 Fed. Appx. 994.

No. 20–710. GROVE *v.* GROOME ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 551.

No. 20–713. VENTURA DE PAULINO *v.* NEW YORK CITY DEPARTMENT OF EDUCATION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 959 F. 3d 519.

No. 20–715. HERSI *v.* SHELDON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–721. GARDING *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 400 Mont. 296, 466 P. 3d 501.

No. 20–729. CODERCH MITJANS *v.* EGI–VSR, LLC. C. A. 11th Cir. Certiorari denied. Reported below: 963 F. 3d 1112.

No. 20–731. WINFIELD *v.* UNITED STATES PROBATION AND PRETRIAL SERVICES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 343.

No. 20–736. FRASCH *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 279 So. 3d 844.

No. 20–741. ANDERSON, ON BEHALF OF MINOR CHILD M. A *v.* VAZQUEZ. C. A. 11th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 358.

No. 20–747. GARY ET AL. *v.* JTC HOLDINGS, LLC. Ct. App. Colo. Certiorari denied.

No. 20–751. KRAPACS *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied.

No. 20–754. VON WEINGARTEN *v.* CHESTER. C. A. 2d Cir. Certiorari denied. Reported below: 818 Fed. Appx. 110.

No. 20–761. CAMPBELL *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 600 S. W. 3d 780.

No. 20–774. PARISI *v.* DAYTON BAR ASSOCIATION CERTIFIED GRIEVANCE COMMITTEE ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 159 Ohio St. 3d 211, 2019-Ohio-5157, 150 N. E. 3d 43.

No. 20–778. GROSE *v.* MNUCHIN, SECRETARY OF THE TREASURY. C. A. 6th Cir. Certiorari denied.

No. 20–780. AGUILLARD *v.* LOUISIANA COLLEGE. C. A. 5th Cir. Certiorari denied. Reported below: 824 Fed. Appx. 248.

No. 20–788. VEASY ET AL. *v.* FRATERNAL ORDER OF POLICE JIM FOGLEMAN LODGE #50, INC. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 298 So. 3d 619.

No. 20–5064. BROWN *v.* UNITED STATES; and
No. 20–5074. BANKS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 455.

No. 20–5090. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 793 Fed. Appx. 346.

No. 20–5184. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 950 F. 3d 328.

No. 20–5202. COLLINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 131.

No. 20–5278. WHITEHEAD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 782 Fed. Appx. 649.

No. 20–5285. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 952 F. 3d 153.

No. 20–5308. HORTON *v.* METHODIST UNIVERSITY, INC. C. A. 4th Cir. Certiorari denied. Reported below: 788 Fed. Appx. 209.

No. 20–5341. BECERRA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 958 F. 3d 725.

No. 20–5342. AVILA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 20–5355. COX *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 322.

No. 20–5416. CURE *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 294 So. 3d 311.

No. 20–5417. ROBINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 20–5485. MOSS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 292 So. 3d 791.

No. 20–5486. MILES *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 292 So. 3d 1178.

No. 20–5517. GARDNER *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2020 Ark. 147, 598 S. W. 3d 10.

No. 20–5537. ALEXANDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 234.

No. 20–5539. RUMZIS *v.* SAUL, COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. Certiorari denied. Reported below: 790 Fed. Appx. 842.

No. 20–5578. WALKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 953 F. 3d 577.

No. 20–5639. CAIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 672.

No. 20–5746. FINNESY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 953 F. 3d 675.

No. 20–5775. ANGELES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 971 F. 3d 535.

No. 20–5784. JEFFRIES *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 160 Ohio St. 3d 300, 2020-Ohio-1539, 156 N. E. 3d 859.

No. 20–5801. ROGERS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 299 So. 3d 386.

No. 20–5828. CARTER *v.* CPC LOGISTICS, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 196.

No. 20–5840. MILLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 953 F. 3d 1095.

No. 20–5874. LARD *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2020 Ark. 110, 595 S. W. 3d 355.

No. 20–5954. MCDONALD *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 296 So. 3d 382.

No. 20–5996. HOWARD *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 959 F. 3d 168.

No. 20–6014. VICK *v.* BERNARD ET AL. C. A. 6th Cir. Certiorari denied.

No. 20–6017. GODFREY *v.* GUYER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 20–6019. GIVENS *v.* YATES ET AL. Ct. App. Ohio, 7th App. Dist., Belmont County. Certiorari denied.

No. 20–6021. ALLEN *v.* BATTS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 437.

No. 20–6025. MCMANUS *v.* VANN, SUPERINTENDENT, ALTONA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 20–6026. NEWKIRK *v.* KISER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 159.

No. 20–6028. MARIA PEDRO *v.* CITY FITNESS, LLC, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 803 Fed. Appx. 647.

No. 20–6035. WILLIAMS *v.* SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 244.

No. 20–6036. WASHINGTON *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 897.

No. 20–6039. MCBRIDE *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 20–6040. BULLOCK *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 248.

No. 20–6053. RIECHMANN *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 3d 559.

No. 20–6060. SMILEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 295 So. 3d 156.

No. 20–6063. SAMEER *v.* RIGHT MOVE 4 U ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 787 Fed. Appx. 473.

No. 20–6072. MARAGLINO *v.* ESPINOSA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 451.

No. 20–6077. PINNEY *v.* ILLINOIS ET AL. C. A. 7th Cir. Certiorari denied.

No. 20–6080. POSEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 20–6081. ALBERT-SHERIDAN *v.* STATE BAR OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 960 F. 3d 1188.

No. 20–6096. BROWN *v.* NICKLAUS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 20–6097. MARTINEZ *v.* GONZALEZ. C. A. 9th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 417.

No. 20–6099. MOORE *v.* UNITED STATES; and
No. 20–6427. WILSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 960 F. 3d 136.

No. 20–6107. MAPLES *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 314.

No. 20–6111. MOORE *v.* BOARD OF REVIEW, NEW JERSEY DEPARTMENT OF LABOR, ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 20–6113. WOGENSTAHL *v.* SHOOP, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–6115. TAYLOR *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 20–6120. TIPPINS *v.* NWI–1, INC., ET AL. C. A. 6th Cir. Certiorari denied.

No. 20–6125. JONES *v.* TRAYLOR ET AL. C. A. 8th Cir. Certiorari denied.

No. 20–6126. JONES *v.* EDWARD ET AL. C. A. 8th Cir. Certiorari denied.

No. 20–6127. TART *v.* VIGUS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 819 Fed. Appx. 181.

No. 20–6131. SMITH *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 2020 WI App 1, 389 Wis. 2d 624, 937 N. W. 2d 297.

No. 20–6132. COFFEE *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 2020 WI 53, 391 Wis. 2d 831, 943 N. W. 2d 845.

No. 20–6136. BARNABY *v.* WITKOWSKI ET AL. C. A. 6th Cir. Certiorari denied.

No. 20–6139. ALVARADO *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 20–6144. KUNTZ *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 20–6158. BROCKINGTON *v.* SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 785 Fed. Appx. 122.

No. 20–6159. BRUCE *v.* PENTAGON FEDERAL CREDIT UNION. C. A. 4th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 248.

No. 20–6160. BLANKUMSEE *v.* WEST, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 893.

No. 20–6166. SIGMON *v.* STIRLING, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 956 F. 3d 183.

No. 20–6174. CHILDS *v.* WESTERN TIDEWATER COMMUNITY SERVICES BOARD. C. A. 4th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 116.

No. 20–6175. WALKER *v.* LAUGHLIN, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 20–6176. WEATHERS *v.* FRAKES, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 8th Cir. Certiorari denied.

No. 20–6177. DAVIS *v.* GOODYEAR POLICE DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 796 Fed. Appx. 449.

No. 20–6181. SHAREEF *v.* MOORE ET AL. (three judgments). C. A. 3d Cir. Certiorari denied.

No. 20–6187. JACKSON *v.* COUNTY OF SACRAMENTO DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 587.

No. 20–6194. VODICKA *v.* TOBOLOWSKY, EXECUTOR OF THE ESTATE OF TOBOLOWSKY, ET AL. Sup. Ct. Tex. Certiorari denied.

No. 20–6202. WOOTEN *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2020 Ark. 305, 608 S. W. 3d 565.

No. 20–6203. RACHEL O. *v.* ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES. Sup. Ct. Alaska. Certiorari denied. Reported below: 467 P. 3d 1076.

No. 20–6205. CARAFFA *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA. C. A. 9th Cir. Certiorari denied.

No. 20–6206. JOHNSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2020 IL App (1st) 172094–U.

No. 20–6207. COOPER *v.* BAY COUNTY, FLORIDA, ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 295 So. 3d 218.

No. 20–6208. JACKSON *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–6219. LYNCH *v.* CHAO ET AL. Ct. App. Cal., 2d App. Dist., Div. 3. Certiorari denied.

No. 20–6222. WHITE *v.* YANG ACUPUNCTURE ET AL. C. A. 7th Cir. Certiorari denied.

No. 20–6223. WHITE *v.* TAVEL. C. A. 7th Cir. Certiorari denied.

No. 20–6224. WHITE *v.* ELITE BEVERAGES. C. A. 7th Cir. Certiorari denied.

No. 20–6228. LE *v.* DWYER ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–6229. JOHNSON *v.* MCREYNOLDS. Ct. App. Nev. Certiorari denied. Reported below: 136 Nev. 833, 470 P. 3d 280.

No. 20–6232. PETERSON *v.* REWERTS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–6233. MOTE *v.* MURTIN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 816 Fed. Appx. 635.

No. 20–6235. MONTANO *v.* COURT OF APPEALS OF MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 506 Mich. 888, 946 N. W. 2d 781.

No. 20–6239. MOHAMMED *v.* PRAIRIE STATE LEGAL SERVICES ET AL. C. A. 7th Cir. Certiorari denied.

No. 20–6240. RICHARDS *v.* TASKILA, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–6245. DAVIS *v.* CHAPMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–6250. BOX *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 181 App. Div. 3d 1238, 119 N. Y. S. 3d 650.

No. 20–6251. BYERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 801 Fed. Appx. 889.

No. 20–6252. BOYLE *v.* SHOOP, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–6253. SEALED APPELLANT *v.* SEALED APPELLEE. C. A. 5th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 138.

No. 20–6254. YOQUIGUA LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 654.

No. 20–6256. VALENTINE *v.* PNC FINANCIAL SERVICES GROUP, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 722.

No. 20–6257. DAVIS *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 337.

No. 20–6258. CAMPBELL *v.* GAUSE ET AL. C. A. 6th Cir. Certiorari denied.

No. 20–6261. DESJARDINS-RACINE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 219.

No. 20–6262. BROWN *v.* JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 20–6263. ABDULRAZZAK *v.* FLUKE, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 20–6264. ABDELSALAM, AKA ABDELSALIM, AKA AL SAYED *v.* ROSEN, ACTING ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 20–6265. AGUILAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 973 F. 3d 445.

No. 20–6266. SALAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 218.

No. 20–6268. ROBERTS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 20–6269. GARDNER *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 245 Md. App. 740.

No. 20–6271. BETTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 297.

No. 20–6273. BARRETT *v.* PARRIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–6274. JUAREZ, AKA PEREZ-JUAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 313.

No. 20–6276. FRESSADI *v.* ARIZONA ET AL. Ct. App. Ariz. Certiorari denied.

No. 20–6277. STUCKS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 306 So. 3d 373.

No. 20–6281. RATLIFF *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 827 Fed. Appx. 937.

No. 20–6282. THOMAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 969 F. 3d 583.

No. 20–6285. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 274.

No. 20–6286. ARAGON *v.* WILLIAMS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 819 Fed. Appx. 610.

No. 20–6288. SNYDER *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 20–6290. SANCHEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 20–6292. RICHEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 280.

No. 20–6293. GRIFFIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 815.

No. 20–6298. BUTLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 20–6299. LEYVA-PERAZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 417.

No. 20–6301. WALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 844.

No. 20–6304. AL-FAREKH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 956 F. 3d 99.

No. 20–6306. GILLIAM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 834 Fed. Appx. 387.

No. 20–6309. URENA-VILLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 584.

No. 20–6311. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 970 F. 3d 650.

No. 20–6313. MERRITT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 243.

No. 20–6314. MCCLURES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 814.

No. 20–6316. PUBIEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 727.

No. 20–6317. PETTY *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 152 N. E. 3d 1075.

No. 20–6320. CARTER *v.* PELLICANE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 243.

No. 20–6324. LAIRD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 497.

No. 20–6326. BENNETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 824 Fed. Appx. 236.

No. 20–6327. CARROLL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 264.

No. 20–6328. MAYHALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 282.

No. 20–6330. MACIAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 1000.

No. 20–6332. SALYERS *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 20–6335. SIKES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 824 Fed. Appx. 805.

No. 20–6338. SMITH *v.* COOK, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 956 F. 3d 377.

No. 20–6340. FARRACE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 470.

No. 20–6341. HARRIMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 970 F. 3d 1048.

No. 20–6342. GUTIERREZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 963 F. 3d 320.

No. 20–6343. FERNANDES *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 485 Mass. 172, 148 N. E. 3d 361.

No. 20–6346. MORRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 156.

No. 20–6348. O'BRIEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 20–6350. DOZIER *v.* NEVEN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–6360. WILKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 20–6362. AVALOS-RIVERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 110.

No. 20–6363. CABEZAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 415.

No. 20–6364. DAVIS *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 20–6370. MERRITT *v.* MAY, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 20–6372. ASHE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 229 A. 3d 1228.

No. 20–6375. NWEME *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–6376. HARSTINE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 852.

No. 20–6378. WHITE *v.* WISHARD HOSPITAL. C. A. 7th Cir. Certiorari denied.

No. 20–6380. HESTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 20–6381. ANASTASIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 972 F. 3d 63.

No. 20–6382. EPLION *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 20–6389. MARTINEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 261.

No. 20–6390. CABRERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 20–6392. GAKUBA *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 810 Fed. Appx. 12.

No. 20–6394. HAGAR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 361.

No. 20–6397. CORNEJO *v.* PFEIFFER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 20–6402. TREANTOS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 20–6403. MATTINGLY *v.* DUVAL COUNTY JAIL ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 777 Fed. Appx. 971.

No. 20–6405. CATO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 827 Fed. Appx. 398.

No. 20–6406. CUDDINGTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 241.

No. 20–6408. FERNANDEZ-VARGAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 355.

No. 20–6412. ST. HILAIRE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 960 F. 3d 61.

No. 20–6415. BURLEIGH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 214.

No. 20–6418. HARRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–6420. URIAS ESPINOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 328.

No. 20–6423. LEE *v.* AT&T SERVICES, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 372.

No. 20–6426. FARIAS-VALDOVINOS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 441.

No. 20–6434. MADERO-DIAZ, AKA RAMON CASTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 489.

No. 20–6435. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 831 Fed. Appx. 100.

No. 20–6437. PENA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 963 F. 3d 1016.

No. 20–6438. MOLINA *v.* FOX, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 469.

No. 20–6439. PATTERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 333.

No. 20–6440. TOSCANO *v.* ADAM ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 687.

No. 20–6442. MOORE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 963 F. 3d 725.

No. 20–6446. COTTO-FLORES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 970 F. 3d 17.

No. 20–6449. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 394.

No. 20–6450. YERKES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 334.

No. 20–6451. WHITE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 828 Fed. Appx. 557.

No. 20–6455. WADE *v.* TRUSTEES OF INDIANA UNIVERSITY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 410.

No. 20–6461. MORRIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 341.

No. 20–6463. MURILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 372.

No. 20–6464. MORENO-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 364.

No. 20–6465. TILLERY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 157.

No. 20–6467. HOWARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 383.

No. 20–6470. WILSON *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied.

No. 20–6482. MOFFITE *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 309 So. 3d 529.

No. 20–6485. COLLINS *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 694.

No. 20–6508. HARRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 829 Fed. Appx. 64.

No. 20–6523. BROOKS *v.* JORDAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–6581. HANZLIK *v.* JOSEPH, SUPERINTENDENT, BEDFORD HILLS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 19–1184. BRUNI ET AL. *v.* CITY OF PITTSBURGH, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 941 F. 3d 73.

Statement of JUSTICE THOMAS respecting the denial of certiorari.

The city of Pittsburgh, like many jurisdictions, has created "buffer zones" around abortion clinics. These zones often impose serious limits on free speech. Many even prohibit certain one-on-one conversations. In 2000, we upheld one such law, determining that it survived under the First Amendment because it satisfied intermediate scrutiny. *Hill* v. *Colorado*, 530 U. S. 703 (2000). Our use of intermediate scrutiny there, however, "is incompatible

with current First Amendment doctrine as explained in *Reed* [v. *Town of Gilbert*, 576 U. S. 155 (2015)] and *McCullen* [v. *Coakley*, 573 U. S. 464 (2014)]." *Price* v. *Chicago*, 915 F. 3d 1107, 1117 (CA7 2019). For example, these more recent decisions establish that strict scrutiny is the proper standard of review when a law targets a "specifc subject matter . . . even if it does not discriminate among viewpoints within that subject matter." *Reed*, 576 U. S., at 169.

I agree with the Court's decision not to take up this case because it involves unclear, preliminary questions about the proper interpretation of state law. But the Court should take up this issue in an appropriate case to resolve the glaring tension in our precedents.

No. 19–1389. TEXAS DEMOCRATIC PARTY ET AL. *v.* ABBOTT, GOVERNOR OF TEXAS, ET AL. C. A. 5th Cir. Certiorari before judgment denied.

No. 20–136. DOZIER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 949 F. 3d 322.

No. 20–276. GIBSON *v.* SECURITIES AND EXCHANGE COMMISSION ET AL. C. A. 11th Cir. Motion of Pacifc Legal Foundation for leave to f le brief as *amicus curiae* granted. Certiorari denied. Reported below: 795 Fed. Appx. 753.

No. 20–405. CITY OF MIAMI GARDENS, FLORIDA *v.* WELLS FARGO & CO. ET AL. C. A. 11th Cir. Motion of International Municipal Lawyers Association for leave to f le brief as *amicus curiae* granted. Reported below: 931 F. 3d 1274.

No. 20–427. POLK COUNTY, WISCONSIN *v.* J. K. J. ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 960 F. 3d 367.

No. 20–510. IQVIA INC. *v.* MUSSAT. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 953 F. 3d 441.

No. 20–519. STATE BAR OF CALIFORNIA ET AL. *v.* ALBERT-SHERIDAN. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 960 F. 3d 1188.

No. 20–523. OTWORTH *v.* PNC BANK. C. A. 6th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 20–527. GUSKIEWICZ ET AL. *v.* DTH MEDIA CORP. ET AL. Sup. Ct. N. C. Motion of Victim Advocacy Groups for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 374 N. C. 292, 841 S. E. 2d 251.

No. 20–553. PENNSYLVANIA VOTERS ALLIANCE ET AL. *v.* CENTRE COUNTY, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari before judgment denied.

No. 20–589. MCDONALD *v.* EAGLE COUNTY, COLORADO, ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 807 Fed. Appx. 786.

No. 20–707. JOHNSON *v.* WILSON, WARDEN. C. A. D. C. Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 960 F. 3d 648.

No. 20–712. BURLAKA ET AL. *v.* CONTRACT TRANSPORT SERVICES, LLC. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 971 F. 3d 718.

No. 20–714. SACCOCCIA *v.* UNITED STATES ET AL. C. A. 1st Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 955 F. 3d 171.

No. 20–722. WILLIAMSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 802 Fed. Appx. 795.

No. 20–737. B/E AEROSPACE, INC. *v.* C&D ZODIAC, INC. C. A. Fed. Cir. Certiorari denied. JUSTICE BREYER and JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 962 F. 3d 1373.

No. 20–767. O'BRIEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 953 F. 3d 449.

No. 20–6078. VREELAND *v.* ZUPAN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 801 Fed. Appx. 629.

No. 20–6183. HATTON *v.* SEVIER, SUPERINTENDENT, NEW CASTLE CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition.

No. 20–6377. MARTIN *v.* FOWLER ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 804 Fed. Appx. 414.

Rehearing Denied

No. 19–1277. THORPE *v.* DUMAS ET AL., 592 U. S. 914;

No. 19–1342. MULCAHY *v.* ASPEN PITKIN COUNTY HOUSING AUTHORITY, 592 U. S. 917;

No. 19–1419. HENRY-BEY *v.* CASTRO ET AL., 592 U. S. 921;

No. 19–5267. ST. HUBERT *v.* UNITED STATES, 590 U. S. 984;

No. 19–6594. INGRAHAM *v.* FLORIDA, 589 U. S. 1150;

No. 19–8446. TWITTY *v.* SMITH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL., 592 U. S. 927;

No. 19–8458. ALLEN *v.* JORDAN ET AL., 592 U. S. 928;

No. 19–8648. MCNEAL *v.* FLEMING ET AL., 592 U. S. 935;

No. 19–8684. HILL *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA, 592 U. S. 937;

No. 19–8690. WHEELER *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, 592 U. S. 937;

No. 19–8701. RAYMOND *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA, 592 U. S. 938;

No. 19–8716. PEPKE *v.* UNITED STATES, 592 U. S. 938;

No. 19–8724. GARRY *v.* TRANE CO., 592 U. S. 939;

No. 19–8728. HARRELL *v.* CALIFORNIA, 592 U. S. 939;

No. 19–8769. SHUMAKE *v.* VIRGINIA, 592 U. S. 941;

No. 19–8793. R. W. *v.* DAUPHIN COUNTY SOCIAL SERVICES FOR CHILDREN AND YOUTH, 592 U. S. 943;

No. 19–8801. JONES ET AL. *v.* LAMAR CO., LLC, 592 U. S. 943;

No. 19–8834. DUTTA-ROY *v.* JYSK BED'N LINEN, DBA BY DESIGN FURNITURE, AS SUCCESSOR TO QUICK SHIP HOLDING, INC., DBA BY DESIGN FURNITURE, 592 U. S. 945;

No. 20–13. LAVERGNE *v.* CAIN, WARDEN, ET AL., 592 U. S. 951;

No. 20–112. HERNANDEZ *v.* PNMAC MORTGAGE OPPORTUNITY FUND INVESTORS, LLC, ET AL., 592 U. S. 1086;

No. 20–187. CHUKWUANI *v.* SOLON CITY SCHOOL DISTRICT, 592 U. S. 1086;

No. 20–242. CAVE *v.* DELTA DENTAL OF CALIFORNIA ET AL., 592 U. S. 1074;

No. 20–247. BELANUS *v.* DUTTON ET AL., 592 U. S. 1074;

No. 20–248. ROUNDS *v.* KOCH ET AL., 592 U. S. 1074;

No. 20–329. SOWELL ET AL. *v.* TINLEY, RENEHAN & DOST, LLP, ET AL., 592 U. S. 1075;

No. 20–344. MYERS *v.* MYERS ET AL., 592 U. S. 1105;

No. 20–348. MERCER *v.* VEGA, 592 U. S. 1087;

No. 20–364. WILKINS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA, 592 U. S. 1114;

No. 20–484. WOODS *v.* STORMS ET AL., 592 U. S. 1106;

No. 20–5020. ALLEN *v.* TRI-LIFT NORTH CAROLINA, INC., ET AL., 592 U. S. 958;

No. 20–5025. AMOS *v.* BOWEN, 592 U. S. 959;

No. 20–5043. RIZK *v.* DEFENSE FINANCE AND ACCOUNTING SERVICE, 592 U. S. 960;

No. 20–5048. BOWMAN *v.* BOYD, WARDEN, 592 U. S. 960;

No. 20–5084. ELLIS *v.* UNITED STATES, 592 U. S. 962;

No. 20–5188. BARNES *v.* DOWLING, WARDEN, 592 U. S. 967;

No. 20–5211. DOBSON *v.* STOLLE ET AL., 592 U. S. 968;

No. 20–5236. IN RE ROPE, 592 U. S. 1000;

No. 20–5247. BURNSIDE *v.* REWERTS, WARDEN, 592 U. S. 970;

No. 20–5289. SANDERSON *v.* FOLEY, WARDEN, 592 U. S. 1005;

No. 20–5291. JOHNSON *v.* MARLAR, 592 U. S. 971;

No. 20–5329. SCYPHERS *v.* WASHINGTON, 592 U. S. 972;

No. 20–5509. PUGH *v.* DELOACH, WARDEN, 592 U. S. 1077;

No. 20–5518. VANCE *v.* BUCHANAN, WARDEN, 592 U. S. 1078;

No. 20–5519. WANKE *v.* ILLINOIS, 592 U. S. 1007;

No. 20–5525. BAILEY *v.* UNITED STATES ET AL., 592 U. S. 1028;

No. 20–5541. SACHS *v.* BANK OF AMERICA, N. A., 592 U. S. 1078;

No. 20–5567. AMES *v.* HSBC BANK, USA, N. A., 592 U. S. 1079;

No. 20–5572. WITKIN *v.* LOTERSZTAIN ET AL., 592 U. S. 1008;

No. 20–5623. STEFANYUK *v.* UNITED STATES, 592 U. S. 1010;

No. 20–5693. In re Dizzley, 592 U. S. 1104;

No. 20–5731. In re Alford, 592 U. S. 1000;

No. 20–5750. Staples *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division, 592 U. S. 1108; and

No. 20–5765. Borden *v.* Swarthout, Warden, 592 U. S. 1089. Petitions for rehearing denied.

No. 19–1343. In re Starling, 592 U. S. 911. Motion for leave to file petition for rehearing denied. Justice Kavanaugh took no part in the consideration or decision of this motion.

No. 19–1470. Gurrola *v.* Walgreen Co., 592 U. S. 924. Motion for leave to file petition for rehearing denied.

No. 19–8630. Lussy *v.* Lussy et al., 592 U. S. 934;

No. 20–5028. Lussy *v.* Dahood, 592 U. S. 986; and

No. 20–5029. Lussy *v.* Lussy, 592 U. S. 986. Petitions for rehearing denied. The Chief Justice took no part in the consideration or decision of these petitions.

January 12, 2021

Miscellaneous Orders

No. 20A34. Food and Drug Administration et al. *v.* American College of Obstetricians and Gynecologists et al. D. C. Md. Application for stay, presented to The Chief Justice, and by him referred to the Court, granted, and the District Court's July 13, 2020, order granting preliminary injunction is stayed pending disposition of the appeal in the United States Court of Appeals for the Fourth Circuit and disposition of the petition for writ of certiorari, if such writ is timely sought. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court. Justice Breyer would deny the application.

Chief Justice Roberts, concurring.

The question before us is not whether the requirements for dispensing mifepristone impose an undue burden on a woman's right to an abortion as a general matter. The question is instead whether the District Court properly ordered the Food and Drug

Administration to lift those established requirements because of the court's own evaluation of the impact of the COVID–19 pandemic. Here as in related contexts concerning government responses to the pandemic, my view is that courts owe signifcant deference to the politically accountable entities with the "background, competence, and expertise to assess public health." *South Bay United Pentecostal Church* v. *Newsom*, 590 U. S. 965, 967 (2020) (ROBERTS, C. J., concurring in denial of application for injunctive relief). In light of those considerations, I do not see a suffcient basis here for the District Court to compel the FDA to alter the regimen for medical abortion.

JUSTICE SOTOMAYOR, with whom JUSTICE KAGAN joins, dissenting.

The majority of American women seeking abortion care during the first 10 weeks of pregnancy rely on medication abortion. Medication abortion involves taking two prescription drugs, mifepristone and misoprostol, which together induce the equivalent of an early miscarriage. The Food and Drug Administration (FDA) allows patients to receive all physician consultations for a medication abortion virtually and to take both prescriptions at home without medical supervision. To obtain mifepristone, however, the FDA requires patients to go to a hospital, clinic, or medical offce to pick up the drug in person and sign a disclosure form.[1] Of the over 20,000 FDA-approved drugs, mifepristone is the only one that the FDA requires to be picked up in person for patients to take at home.

The FDA's unique treatment of mifepristone has become even more pronounced during the COVID–19 pandemic. After the Secretary of Health and Human Services (HHS) declared the COVID–19 pandemic a public health emergency, the FDA and HHS waived in-person requirements for several other drugs, including certain controlled substances, but not for mifepristone. As a result, Government policy now permits patients to receive prescriptions for powerful opioids without leaving home, yet still requires women to travel to a doctor's offce to pick up mifepristone, only to turn around, go home, and ingest it without supervision.

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[1] Misoprostol, meanwhile, can be obtained through a retail or mail-order pharmacy.

In July, a District Court enjoined the FDA's in-person dispensing and signature requirements for mifepristone for the duration of the COVID–19 pandemic. Today, the Court grants extraordinary relief to reinstate them. Because the FDA's policy imposes an unnecessary, unjustifable, irrational, and undue burden on women seeking an abortion during the current pandemic, and because the Government has not demonstrated irreparable harm from the injunction, I dissent.

I

A

As of early January, the United States has endured over 20 million reported COVID–19 cases and over 350,000 deaths from the disease.[2] COVID–19 spreads easily from person to person and many individuals infected by COVID–19 display no symptoms. The Centers for Disease Control and Prevention (CDC) have therefore advised people to avoid close contact with others, especially in indoor spaces, to the greatest extent possible.[3] The COVID–19 pandemic has thus made many typical activities more diffcu lt and dangerous. A trip to the doctor's offce is no exception.

As a result, the Federal Government has urged healthcare providers and patients to take advantage of telemedicine. For example, the CDC has advised medical providers to use telemedicine "whenever possible" because it is "the best way to protect patients and staff from COVID–19."[4] The CDC has likewise informed patients that they should use telemedicine "to reduce the risk of COVID–19 and keep you and your family healthy."[5] As mentioned above, the FDA and HHS have waived many in-person drug distribution requirements because they could "put patients

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[2] See CDC, United States COVID–19 Cases and Deaths by State (updated Jan. 5, 2021), https://covid.cdc.gov/covid-data-tracker/#cases_casesper100k.

[3] See CDC, Things To Know About the COVID–19 Pandemic (updated Dec. 31, 2020), https://www.cdc.gov/coronavirus/2019-ncov/your-health/need-to-know.html.

[4] See CDC, Prepare Your Practice for COVID–19 (updated June 12, 2020), https://www.cdc.gov/coronavirus/2019-ncov/hcp/preparedness-resources.html.

[5] See CDC, Telemedicine: What Does It Mean and Why Should You Care? (updated Sept. 15, 2020), https://www.cdc.gov/coronavirus/2019-ncov/downloads/global-covid-19/Telemedicine-Factsheet-MIT.pdf.

and others at risk for transmission of the coronavirus."[6] For instance, the FDA no longer requires patients to undergo in-person procedures, such as laboratory tests or MRIs, before being prescribed certain drugs. Similarly, HHS now permits physicians to use telemedicine, rather than in-person evaluations, before prescribing certain controlled substances, including opioids.

The Government has thus recognized that in-person healthcare during the COVID–19 pandemic poses a signifcant risk to patients' health, and it has acted to help patients "`access healthcare they need from their home, without worrying about putting themselves or others at risk during the COVID–19 outbreak.'"[7] Yet the Government has refused to extend that same grace to women seeking medication abortions. Women must still go to a clinic in person to pick up their mifepristone prescriptions, even though physicians may provide all counseling virtually, women may ingest the drug unsupervised at home, and any complications will occur long after the patient has left the clinic.

B

This summer, representatives of the Nation's healthcare providers, including the American College of Obstetricians and Gynecologists (ACOG) and the Council of University Chairs of Obstetrics and Gynecology (CUCOG), along with SisterSong Women of Color Reproductive Justice Collective, f led suit to enjoin the Federal Government from enforcing mifepristone's in-person requirements during the COVID–19 pandemic. In a thorough opinion, the District Court concluded that the in-person requirements likely placed a "substantial obstacle" in the path of women seeking abortions during the pandemic. 472 F. Supp. 3d 183, 217 (Md. 2020) (internal quotation marks omitted). The court preliminarily enjoined the Government from enforcing mifepristone's in-person requirements during the pandemic. *Id.*, at 233. The Court of Appeals for the Fourth Circuit denied the Government's request

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[6] FDA, Policy for Certain REMS Requirements During the COVID–19 Public Health Emergency: Guidance for Industry and Health Care Professionals 7 (Mar. 2020), https://www.fda.gov/media/136317/download.

[7] Dept. of Health & Human Servs., Secretary Azar Announces Historic Expansion of Telehealth Access To Combat COVID–19 (Mar. 17, 2020), https://www.hhs.gov/about/news/2020/03/17/secretary-azar-announces-historic-expansion-of-telehealth-access-to-combat-covid-19.html.

for a stay of that injunction. The Government then applied for a stay from this Court.

In early October, this Court issued an order holding the Government's application in abeyance so the District Court could consider a yet-to-be-filed motion from the Government to dissolve, stay, or modify the injunction, "including on the ground that relevant circumstances have changed." 592 U. S. 990, 991 (2020). The Government filed such a motion, but the District Court concluded that no changed circumstances justifed a stay or dissolution of the injunction. 506 F. Supp. 3d 328, 349 (Md. 2020). Indeed, the District Court found that the pandemic had gotten only worse since the summer. *Id.*, at 339. The number of COVID–19 cases in the United States had increased four-fold, the number of deaths had more than doubled, and the pandemic was expected to intensify in the coming winter months. *Ibid.* The District Court therefore denied the motion.

The Government has now returned to this Court, asking again for a stay of the District Court's injunction. Although the COVID–19 pandemic has only worsened since October, the Court now grants the Government's request.

A stay of a district court's injunction is "`extraordinary'" relief. See *Williams* v. *Zbaraz*, 442 U. S. 1309, 1311 (1979) (Stevens, J., in chambers). "An applicant for a stay must meet a heavy burden of showing not only that the judgment of the lower court was erroneous on the merits, but also that the applicant will suffer irreparable injury if the judgment is not stayed pending his appeal." *Ruckelshaus* v. *Monsanto Co.*, 463 U. S. 1315, 1316 (1983) (Blackmun, J., in chambers) (internal quotation marks omitted); see also *Maryland* v. *King*, 567 U. S. 1301, 1302 (2012) (ROBERTS, C. J., in chambers). The District Court was correct to conclude that the FDA's unique regulation of mifepristone during the COVID–19 pandemic "plac[es] a substantial obstacle in the path of a woman seeking an abortion." *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, 877 (1992) (plurality opinion); see also *June Medical Services L. L. C.* v. *Russo*, 591 U. S. 299, 304–305 (2020) (plurality opinion) ("`"[H]ealth regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion"' . . . are . . . `constitutionally invalid'" (quoting *Whole Woman's Health* v. *Hellerstedt*, 579 U. S. 582, 589–590 (2016)); *June Medical*, 591 U. S., at 353–354 (Roberts, C. J., concurring in judgment) ("In this case, *Casey*'s requirement

of f nding a substantial obstacle before invalidating an abortion regulation is . . . a suffcient basis for the decision"); *id.*, at 379 (ALITO, J., dissenting) ("Under our precedent, the critical question . . . is whether [a] challenged . . . law places a `substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus' " (quoting *Casey*, 505 U. S., at 877 (plurality opinion))). The Government has moreover failed to demonstrate irreparable harm. For these reasons, I would deny the Government's request.

II

A

Due to particularly severe health risks, vastly limited clinic options, and the 10-week window for obtaining a medication abortion, the FDA's requirement that women obtain mifepristone in person during the COVID–19 pandemic places an unnecessary and undue burden on their right to abortion. Pregnancy itself puts a woman at increased risk for severe consequences from COVID–19. In addition, more than half of women who have abortions are women of color, and COVID–19's mortality rate is three times higher for Black and Hispanic individuals than non-Hispanic White individuals. On top of that, three-quarters of abortion patients have low incomes, making them more likely to rely on public transportation to get to a clinic to pick up their medication. Such patients must bear further risk of exposure while they travel, sometimes for several hours each way, to clinics often located far from their homes.[8] Finally, minority and low-income populations are more likely to live in intergenerational housing, so patients risk infecting not just themselves, but also elderly parents and grandparents. These risks alone are signifcant deterrents for women seeking a medication abortion that requires in-person pickup.

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[8] For instance, according to the most recently available data, Arkansas has just three abortion clinics, and 77% of women of childbearing age live in a county without any clinic. Mississippi has just one abortion clinic, and 91% of women of childbearing age live in a county without any clinic. Missouri has just three abortion clinics, and 78% of women of childbearing age live in a county without a clinic. North Dakota has just one abortion clinic, and 72% of women of childbearing age live in a county without any clinic. See Guttmacher Institute, R. Jones, E. Witwer, & J. Jerman, Abortion Incidence and Service Availability in the United States, 2017, pp. 17–18 (2019).

The obstacles are even greater, however, because medical offces have dramatically reduced availability during the pandemic. The District Court received unrebutted evidence that some healthcare facilities that normally provide medication abortion services have closed at various times during the pandemic, making it impossible for women to pick up their mifepristone. Even those practices that remain open may operate at decreased capacity to maintain social distancing, sometimes seeing just 10% to 25% of their typical patient load. One doctor described how the pandemic caused her hospital system to stop in-person visits to all but three primary care clinics. Abortion patients were referred to distantly located family planning clinics that were open only a half day per week.[9]

The District Court found that these obstacles can cause women to miss the 10-week window for a medication abortion altogether. The average American woman does not discover that she is pregnant until 5.5 weeks, and nearly a quarter of women do not discover their pregnancies until 7 weeks or later.[10] A woman seeking a medication abortion may therefore be left with fewer than three weeks to f nd an accessible clinic that will provide mifepristone, schedule and receive the required counseling,[11] and make an appointment to collect the medication in person, all while trying to determine the safest way to travel to the clinic and perhaps wondering whether she will bring COVID–19 back home with her.

What rejoinder does the Government have to the possibility that refusing to suspend the FDA's in-person requirements for mifepristone during the COVID–19 pandemic will cause some women to miss the 10-week window altogether? No cause for

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[9] Data has begun to bear out the diffcu lties women have faced in accessing reproductive care. In a June 2020 survey, one in three women reported that they had delayed or canceled a visit for sexual or reproductive care or had trouble accessing birth control during the pandemic. See L. Lindberg, A. VandeVusse, J. Mueller, & M. Kirstein, Early Impacts of the COVID–19 Pandemic: Findings From the 2020 Guttmacher Survey of Reproductive Health Experiences, p. 4 (June 2020), https://www.guttmacher.org/report/early-impacts-covid-19-pandemic-f ndings-2020-guttmacher-survey-reproductive-health. Such delays were higher among Black, Hispanic, and low-income women. *Ibid.*

[10] See Branum & Ahrens, Trends in Timing of Pregnancy Awareness Among US Women, 21 Maternal & Child Health J. 715, 719, 721–722 (2017).

[11] The required counseling can take place in person or via telemedicine, although the patient must then sign a disclosure form in person.

concern, the Government assures this Court, because even if the FDA's in-person requirements cause women to lose the opportunity for a medication abortion, they can still seek out a surgical abortion. What a callous response.

As the Government acknowledges, surgical abortions are far more invasive than medication abortions. Medication abortion involves taking two pills and the equivalent of an early miscarriage. When a woman undergoes surgical abortion, she requires local anesthesia and sometimes sedation, her cervix is stretched with dilating rods, a tube is inserted through her cervix into her uterus, and, depending on the particular procedure, various medical tools are used to remove fetal tissue from her uterus. On top of this, surgical abortions carry all the same (and likely greater) risks of exposure to COVID–19 as do medication abortion's in-person requirements.

The Government insists that requiring women to undergo a far more invasive abortion procedure does not impose an undue burden on women's right to abortion. In support, the Government points to *Gonzales* v. *Carhart*, 550 U. S. 124 (2007), in which this Court held that a ban on a rare, second-trimester abortion procedure was not unconstitutional, in part because "the vast majority" of second-trimester abortions remained available. *Id.*, at 156. This Court has never held that the Government can ban one of the most common and safest early abortion procedures without running into constitutional problems. Indeed, in *Stenberg* v. *Carhart*, 530 U. S. 914 (2000), this Court concluded that a state ban on dilation and evacuation abortion, "the most commonly used method for performing previability second trimester abortions," imposed an undue burden on the right to choose abortion itself. *Id.*, at 945–946. The same reasoning extends to a regulation that, when applied in the context of a deadly pandemic, prevents women from accessing the most commonly used and safest method for early abortions.

The Government also argues that the pandemic has not caused the FDA's regulation to impose a meaningful burden on women seeking medication abortions because in two States that independently require in-person visits for medication abortions (Indiana and Nebraska), there were more abortions in 2020 than in 2019. This comparison, however, provides little insight. For one, the Government does not compare Indiana and Nebraska to States where the in-person requirements for medication abortion

have been suspended, which may have seen even larger increases over 2019. Second, the Government provides data for just two years, so it is impossible to know whether the two States simply saw an unusually low number of abortions in 2019. Finally, the data does not distinguish between medication and surgical abortions. For all anyone can tell, then, Indiana and Nebraska may have seen a large increase in surgical abortions and a reduction in medication abortions. For the reasons discussed above, these procedures are not equivalent. Reading the Government's statistically insignifcant, cherry-picked data is no more informative than reading tea leaves.

Together, patients' health vulnerabilities, public transportation risks, susceptible older family members at home, and clinic closures and reduced services pose substantial, sometimes insurmountable, obstacles for women seeking medication abortions during the COVID–19 pandemic. See *June Medical*, 591 U. S., at 336–339 (plurality opinion); *id.*, at 354–358 (ROBERTS, C. J., concurring in judgment); *Hellerstedt*, 579 U. S., at 622–624. Under these conditions, the in-person requirements for mifepristone impose an unjustifable and undue burden on a woman's constitutional right to an abortion.

B

The District Court was therefore correct on the merits. But even if it were not, the Government has not shown that it will suffer any irreparable harm absent a stay of that court's injunction. The Government argues that all injunctions against a government inherently cause irreparable harm, especially for agencies charged with protecting public health, and that courts should look no further. This Court's precedent does not support such a sweeping rule. See, *e. g.*, *Williams*, 442 U. S., at 1312–1314 (considering whether a state public health agency had shown irreparable harm from an injunction requiring the State to fund medically necessary abortions).

The Government points to no meaningful concrete harms. It argues only that the in-person requirements mitigate health risks from mifepristone "by allowing patients to receive in-person counseling about possible complications and by avoiding potential delays associated with patients trying to obtain the drug from a pharmacy on their own." Application for Stay of Injunction 33. The former concern is undermined by the fact that patients may

receive physician counseling remotely. The latter concern makes no sense: The Government proposes to avoid delays by limiting women's options to obtain care quickly. Indeed, the evidence before the District Court shows that the in-person requirements are causing, not preventing, delays in obtaining critical healthcare. Signifcantly, the FDA's in-person requirements for mifepristone have now been suspended for six months, yet the Government has not identifed a single harm experienced by women who have obtained mifepristone by mail or delivery.

C

The concurrence argues that courts should nonetheless defer to the FDA's decision not to lift mifepristone's in-person requirements during the pandemic. I agree that deference is due to reasoned decisions of public health offcia ls grappling with a deadly pandemic. See *South Bay Pentecostal Church* v. *Newsom*, 590 U. S. 965, 967 (2020) (ROBERTS, C. J., concurring in denial of application for injunctive relief); see also *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 592 U. S. 14, 40 (2020) (SOTOMAYOR, J., dissenting) (citing medical expert declarations supporting challenged responses to the current pandemic). But the record here is bereft of any reasoning. The Government has not submitted a single declaration from an FDA or HHS offcia l explaining why the Government believes women must continue to pick up mifepristone in person, even though it has exempted many other drugs from such a requirement given the health risks of COVID–19. There simply is no reasoned decision here to which this Court can defer. Cf. *Democratic National Committee* v. *Wisconsin State Legislature*, 592 U. S. 1039, 1061 (2020) (KAGAN, J., dissenting in denial of application to vacate stay) (deference not due where the government "has not for a moment considered whether recent COVID conditions demand changes").

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This country's laws have long singled out abortions for more onerous treatment than other medical procedures that carry similar or greater risks. See Greenhouse & Siegel, Casey and the Clinic Closings: When "Protecting Health" Obstructs Choice, 125 Yale L. J. 1428, 1430 (2016). Like many of those laws, maintaining the FDA's in-person requirements for mifepristone during the pandemic not only treats abortion exceptionally, it imposes an

unnecessary, irrational, and unjustifable undue burden on women seeking to exercise their right to choose. One can only hope that the Government will reconsider and exhibit greater care and empathy for women seeking some measure of control over their health and reproductive lives in these unsettling times. See *Gonzales*, 550 U. S., at 172 (Ginsburg, J., dissenting) ("[Women's] ability to realize their full potential . . . is intimately connected to their ability to control their reproductive lives" (internal quotation marks omitted)). For now, I respectfully dissent.

No. 20A122. ROSEN, ACTING ATTORNEY GENERAL, ET AL. *v.* MONTGOMERY. Application for stay or vacatur, presented to THE CHIEF JUSTICE, and by him referred to the Court, granted. The January 11, 2021, order of the United States Court of Appeals for the District of Columbia Circuit granting a stay is vacated. JUSTICE BREYER, JUSTICE SOTOMAYOR, and JUSTICE KAGAN would deny the application.

No. 20A124. MONTGOMERY *v.* WATSON, WARDEN, ET AL. Application for stay of execution of sentence of death, presented to JUSTICE BARRETT, and by her referred to the Court, denied. JUSTICE BREYER, JUSTICE SOTOMAYOR, and JUSTICE KAGAN would grant the application.

No. 20A125. UNITED STATES *v.* MONTGOMERY. Application for stay or vacatur, presented to JUSTICE KAVANAUGH, and by him referred to the Court, granted. The January 12, 2021, order of the United States Court of Appeals for the Eighth Circuit granting a stay is vacated.

Certiorari Denied

No. 20–922 (20A121). MONTGOMERY *v.* ROSEN, ACTING ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied.

JANUARY 14, 2021

Miscellaneous Orders

No. 20A130. JOHNSON *v.* UNITED STATES. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. JUSTICE SOTOMAYOR and JUSTICE KAGAN would grant the application.

No. 20A131. JOHNSON ET AL. *v.* ROSEN, ACTING ATTORNEY GENERAL, ET AL. Application for stay of execution of sentences of death for Corey Johnson and Dustin Higgs, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. JUSTICE BREER, JUSTICE SOTOMAYOR, and JUSTICE KAGAN would grant the application.

JANUARY 15, 2021

Certiorari Granted—Reversed and Remanded

No. 20–927 (20A134). UNITED STATES *v.* HIGGS. C. A. 4th Cir. Certiorari before judgment to the United States Court of Appeals for the Fourth Circuit granted. The December 29, 2020, order of the United States District Court for the District of Maryland is reversed, and the case is remanded to the Court of Appeals with instructions to remand to the District Court for the prompt designation of Indiana under 18 U. S. C. § 3596(a). Application to vacate stay, presented to THE CHIEF JUSTICE, and by him referred to the Court, granted. The January 13, 2021, order of the Court of Appeals granting a stay is vacated. JUSTICE KAGAN would deny the petition for writ of certiorari before judgment and the application.

JUSTICE BREYER, dissenting.

Last July the Federal Government executed Daniel Lee. Lee's execution was the first federal execution in seventeen years. The Government's execution of Dustin Higgs tonight will be its thirteenth in six months. I wrote in July that "the resumption of federal executions promises to provide examples that illustrate the diffcu lties of administering the death penalty consistent with the Constitution." *Barr* v. *Lee*, 591 U. S. 979, 983 (2020) (dissenting opinion). The cases that have come before us provide several of those examples.

I agree with much of what JUSTICE SOTOMAYOR says in greater detail about many of these cases. The present case concerns an inmate infected with COVID–19 at the Federal Correctional Institution in Terre Haute, Indiana. He argues, and the District Court agreed, that COVID–19 caused him signifcant lung damage and that, as a result, executing him by injection of pentobarbital will "subject [him] to a sensation of drowning akin to waterboarding." *In re Federal Bureau of Prisons' Execution Protocol Cases*, No. 1:19–mc–145, Doc. 394, p. 3 (D DC, Jan. 12, 2021). He

also argues that (for complex legal reasons) it is now too late for the Federal Government to obtain an order changing the state law designated to govern his execution from that of Maryland (which is where he was sentenced but which has since abolished the death penalty) to that of Indiana (which maintains the death penalty).

Consider some of the other questions that the federal death penalty cases have raised. To what extent does the Government's use of pentobarbital for executions risk extreme pain and needless suffering? See *Lee*, *supra*, at 983 (BREYER, J., dissenting). Has an inmate demonstrated a suffcient likelihood that she is mentally incompetent—to the point where she will not understand the fact, meaning, or signifcance of her execution? See *Montgomery* v. *Watson*, 592 U. S. 1206 (2021); *Barr* v. *Purkey*, 591 U. S. 1034, 1037 (2020) (SOTOMAYOR, J., dissenting from grant of vacatur). Should a court apply contemporary diagnostic standards to determine whether an inmate is intellectually disabled at the time of his execution, such that the execution is unlawful? See *Bourgeois* v. *Watson*, 592 U. S. 1144 (2020). Is a defendant's second habeas challenge to his death sentence subject to the demanding standard for successive challenges, even though Government conduct prevented him from being able to bring those claims in his frst habeas petition? See *Bernard* v. *United States*, 592 U. S. 1139 (2020). Can a defendant's second habeas challenge include a claim that his trial counsel was constitutionally inadequate where the defendant failed to raise that claim in his frst habeas proceeding only because his frst habeas counsel was also constitutionally inadequate? See *Purkey*, *supra*, at 1036 (BREYER, J., dissenting from grant of vacatur). Does the Federal Government have to follow state requirements for how much advance notice an inmate receives for her execution? See *Rosen* v. *Montgomery*, 592 U. S. 1206 (2021). These are but a few of the many death-penalty-related questions (some technical, some not) that courts must consider, even though the result of this consideration is often delay—perhaps for many years. See *Glossip* v. *Gross*, 576 U. S. 863, 926–929 (2015) (BREYER, J., dissenting).

None of these legal questions is frivolous. What are courts to do when faced with legal questions of this kind? Are they simply to ignore them? Or are they, as in this case, to "hurry up, hurry up"? That is no solution. Higgs' case illustrates this dilemma. The District Court ruled against the Government and the Govern-

ment appealed. The Fourth Circuit denied the Government's request to dispense with oral argument "in light of the novel legal issues presented" and set oral argument for January 27. App. to Pet. for Cert. 29a. The Circuit then stayed the execution pending further order. Order in No. 20–18 (Jan. 13, 2021). The Government now seeks certiorari before judgment, an extraordinary remedy that is to be granted only upon a showing that "the case is of such imperative public importance as to justify deviation from normal appellate practice." This Court's Rule 11. Given the finality and severity of a death sentence, it is particularly important that judges consider and resolve challenges to an inmate's conviction and sentence. How just is a legal system that would execute an individual without consideration of a novel or signifcant legal question that he has raised?

Yet, to consider these questions, some of which (such as mental competency) may not arise until a few weeks before an execution, takes time. That time means delay. The recent federal executions are again illustrative. The Federal Government executed Lee 21 years after his conviction; Brandon Bernard 20 years after his conviction; Alfred Bourgeois 16 years after his conviction; Wesley Purkey 16 years after his conviction; and Lisa Montgomery 12 years after her conviction. Today, the Government executes Higgs 20 years after his conviction. The longer the delay, the weaker the basic penological justifcations for imposing the death penalty in the first place become, and the greater the psychological suffering inflicted on the death row inmate. I remain convinced that this dilemma arises out of efforts to impose the death penalty. Together with other problems that I have previously described, it calls into question the constitutionality of the death penalty itself. See *Glossip*, *supra*, at 945–946 (BREYER, J., dissenting).

But this case involves a procedural issue. The Fourth Circuit issued a stay of the execution and has not yet resolved the Government's appeal. It is rare for us to consider a question before the Circuit has decided it. And I would not depart from ordinary practice here. Consequently, I dissent.

JUSTICE SOTOMAYOR, dissenting.

After seventeen years without a single federal execution, the Government has executed twelve people since July. They are Daniel Lee, Wesley Purkey, Dustin Honken, Lezmond Mitchell,

Keith Nelson, William LeCroy Jr., Christopher Vialva, Orlando Hall, Brandon Bernard, Alfred Bourgeois, Lisa Montgomery, and, just last night, Corey Johnson. Today, Dustin Higgs will become the thirteenth. To put that in historical context, the Federal Government will have executed more than three times as many people in the last six months than it had in the previous six decades.

This unprecedented rush of federal executions has predictably given rise to many diffcu lt legal disputes. One source of confusion has been the Federal Death Penalty Act (FDPA), which Congress enacted in 1994 to guide the imposition and implementation of federal death sentences. Section 60002(a), 108 Stat. 1959, codifed as amended, 18 U. S. C. § 3591 *et seq.* Prior to last July, the Federal Government had executed just three people since the enactment of the FDPA, two in 2001 and one in 2003. Many questions about the FDPA remain unanswered.

Another source of uncertainty has been the Department of Justice's (DOJ) announcement of a new execution protocol (the 2019 Protocol). Whereas the previous protocol prescribed a three-drug cocktail for use in executions, the 2019 Protocol calls for a single drug: pentobarbital. Diffcu lty in obtaining the required drugs had contributed to the Government's nearly two-decade hiatus in carrying out executions. The Government surely knew the 2019 Protocol would face further litigation.

Against this backdrop of deep legal uncertainty, the DOJ did not tread carefully. Simultaneous with the announcement of the 2019 Protocol, it scheduled fve executions; eight would follow in the months to come. This rapid pace required those facing execution to fast-track challenges to their sentences. Rather than permit an orderly resolution of these suits, the Government consistently refused to postpone executions and sought emergency relief to proceed before courts had meaningful opportunities to determine if the executions were legal.

Throughout this expedited spree of executions, this Court has consistently rejected inmates' credible claims for relief. The Court has even intervened to lift stays of execution that lower courts put in place, thereby ensuring those prisoners' challenges would never receive a meaningful airing. The Court made these weighty decisions in response to emergency applications, with little opportunity for proper brief ng and consideration, often in

just a few short days or even hours. Very few of these decisions offered any public explanation for their rationale.

This is not justice. After waiting almost two decades to resume federal executions, the Government should have proceeded with some measure of restraint to ensure it did so lawfully. When it did not, this Court should have. It has not. Because the Court continues this pattern today, I dissent.

I

The Government will execute Dustin Higgs tonight. In 2001, the United States District Court for the District of Maryland sentenced Higgs to death for his involvement in the kidnapping and killing of three people. The FDPA requires that a federal death sentence be "implemented" "in the manner prescribed by the law of the State in which the sentence is imposed." 18 U. S. C. § 3596(a). If that State does not allow the death penalty, the FDPA directs courts to designate an alternate State that does. Executions were legal in Maryland in 2001, so the District Court's Judgment and Order did not designate an alternate State. See App. to Pet. for Cert. 18a–21a. Maryland has since abolished the death penalty, however, so the Government cannot implement the death sentence in accordance with Maryland law as the FDPA requires.

In August 2020, the Government asked the District Court to amend its Judgment and Order to designate Indiana, where Higgs and all other federal death-row prisoners are imprisoned, as the alternate State. Consistent with its current practice, the Government set an execution date before the District Court could rule. The District Court denied the Government's motion, holding that the court had no authority to modify its original judgment. See 2020 WL 7707165, *4 (D Md., Dec. 29, 2020) ("The Government's initial, extraordinary request that the Court amend its original judgment and sentence is something that the Court plainly cannot do"). The Government appealed to the Court of Appeals for the Fourth Circuit, which scheduled oral argument for January 27, 2021. Unwilling to wait, the Government asks this Court to grant certiorari and summarily reverse the District Court without normal briefing or argument, and direct the District Court to designate Indiana as the Government requested.

Ordinarily, this Court grants petitions for certiorari before judgment only "upon a showing that the case is of such imperative

public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court." This Court's Rule 11. The Government falls far short of meeting this strict standard. Whether district courts can amend final orders and judgments in this situation is an open and novel question on which none of the courts of appeals have spoken. After failing to act since Higgs' sentence was imposed in 2001, the Government gives no compelling reason why it suddenly cannot wait a few weeks while courts give his claim the consideration it deserves. Certainly, there is no "imperative public importance" behind the Government's request. I would deny the Government's petition.

II

Sadly, it is not surprising that the Court grants this extraordinary request. Over the past six months, this Court has repeatedly sidestepped its usual deliberative processes, often at the Government's request, allowing it to push forward with an unprecedented, breakneck timetable of executions. With due judicial consideration, some of the Government's arguments may have prevailed and some or even many of these executions may have ultimately been allowed to proceed. Others may not have been. Either way, the Court should not have sanctioned these executions without resolving these critical issues. The stakes were simply too high.

A

Even after 13 federal executions in six months, basic, recurring questions about the FDPA and the 2019 Protocol remain unanswered. For example, what does it mean to "implemen[t]" a federal death sentence "in the manner prescribed by the law of the State"? 18 U. S. C. § 3596(a). Answers run the gamut. Some judges believe the FDPA merely requires following the State's "top-line choice among execution methods such as hanging, electrocution, or lethal injection." *In re Fed. Bureau of Prisons' Execution Protocol Cases*, 955 F. 3d 106, 113 (CADC 2020) (*Execution Protocol Cases I*) (Katsas, J., concurring). Others read the FDPA to incorporate nearly all state execution protocols, including those details that precede the execution itself. See Order in *In re Fed. Bureau of Prisons' Execution Protocol Cases*, No. 20–5361 (CADC, Dec. 10, 2020), pp. 4–5 (*per curiam*) (en banc) (*Execution Protocol Cases II*) (Wilkins, J., dissenting); see also *Execution Protocol Cases I*, 955 F. 3d, at 149, 151 (Tatel, J.,

dissenting).[1] This Court has yet to say which interpretation is correct. See *Mitchell* v. *United States*, 591 U. S. 1077, 1078 (2020) (SOTOMAYOR, J., respecting denial of application for stay) (calling for the Court to "address this issue in an appropriate case"). Worse, the Court has actively prevented lower courts from providing def nitive answers themselves. Just four days ago, the D. C. Circuit granted Lisa Montgomery a stay of her execution so it could decide this issue en banc. See Order in *Montgomery* v. *Rosen*, No. 21–5001 (Jan. 11, 2021) (*per curiam*). This Court vacated that stay without explanation. Montgomery was executed hours later.

Another outstanding question concerns the FDPA's provision that "[a] sentence of death shall not be carried out upon a person who is [intellectually disabled]." 18 U. S. C. § 3596(c). Alfred Bourgeois and Corey Johnson presented substantial evidence that they were intellectually disabled under modern diagnostic standards. Lower courts, however, held that these inmates were barred from challenging their executions on this ground because they had previously been denied relief under outdated diagnostic standards. See 28 U. S. C. § 2255(h). Yet there are compelling reasons to believe that the FDPA directs courts to evaluate intellectual disability based on the standards prevailing at the time of the execution. See *Bourgeois* v. *Watson*, 592 U. S. 1144, 1146–1147 (2020) (SOTOMAYOR, J., dissenting from denial of certiorari and application for stay); Order in *United States* v. *Johnson*, No. 20–15 (CA4, Jan. 14, 2021), pp. 4–5 (Wynn, J., dissenting from denial of rehearing en banc); Order in *United States* v. *Johnson*, No. 20–15 (CA4, Jan. 12, 2021), p. 7 (Motz, J., concurring in part in denial of stay). On that view, prior proceedings relying on obsolete medical standards do not preclude consideration of whether an individual "is" intellectually disabled at the time of his execution. 18 U. S. C. § 3596(c). This Court should have answered this con-

[1] Other judges and courts have taken different positions along this spectrum. See *Execution Protocol Cases I*, 955 F. 3d, at 134 (Rao, J., concurring); Order in *Montgomery* v. *Rosen*, No. 21–5001 (CADC, Jan. 11, 2021), pp. 7–8 (Millett, J., dissenting); *United States* v. *Vialva*, 976 F. 3d 458, 462 (CA5 2020) (*per curiam*); *LeCroy* v. *United States*, 975 F. 3d 1192, 1198 (CA11 2020) ("Whatever that phrase means, we are confdent that it does not extend to ensuring a lawyer's presence at execution"); *United States* v. *Mitchell*, 971 F. 3d 993, 996–997 (CA9 2020) (*per curiam*); *Peterson* v. *Barr*, 965 F. 3d 549, 554 (CA7 2020).

sequential question before allowing the Government to execute Bourgeois and Johnson. Their executions may well have been illegal.

The Court has also allowed executions to proceed in the face of signifcant challenges to the 2019 Protocol's method of execution. A Federal District Court found that Daniel Lee, Wesley Purkey, and Keith Nelson were likely to succeed in showing that the 2019 Protocol violates the Eighth Amendment because pentobarbital causes fuid to rapidly accumulate in the lungs, resulting in "`extreme pain, terror and panic.'" *In re Federal Bureau of Prisons' Execution Protocol Cases*, 471 F. Supp. 3d 209, 218–219 (DC 2020). Accordingly, the District Court preliminarily enjoined executions under the 2019 Protocol. *Id.*, at 225. This Court vacated the injunction and allowed the executions to move forward, concluding that the Government's "competing expert testimony" rendered a "last-minute" stay inappropriate. *Barr* v. *Lee*, 591 U. S. 979, 981 (2020) (*per curiam*). Lee and Purkey, however, did not f le their claims at the last minute. They did so shortly after the DOJ announced the new protocol and scheduled their executions. Nelson raised his claim before his execution was even announced. It was the Government, not the inmates, who charged ahead with conducting executions under the challenged protocol, creating an "artifcia l claim of urgency to truncate ordinary procedures of judicial review." *Id.*, at 983 (SOTOMAYOR, J., dissenting). The Court condoned the Government's tactics and granted a stay.

This Court repeated this error just this week. On December 16, 2020, both Corey Johnson and Dustin Higgs tested positive for COVID–19. They quickly moved to enjoin their executions, arguing that lung damage caused by the virus substantially increased the likelihood they would suffer torturous effects if executed with pentobarbital. The District Court held an evidentiary proceeding and agreed. *In re Federal Bureau of Prisons' Execution Protocol Cases*, 514 F. Supp. 3d 136, 146–151 (DC 2021). This time, the Court of Appeals stayed the injunction, relying on this Court's fawed decision in *Lee*. Order in *Roane* v. *Rosen*, No. 21–5004 (CADC, Jan. 13, 2021), p. 4 (Katsas, J., concurring). This Court left that ruling in place, again allowing these executions to proceed despite the District Court's careful factf nding and the risk of needless and signifcant pain.

B

The issues left unresolved during this saga do not end with the FDPA and 2019 Protocol. Many other challenges deserved this Court's review. None were granted. While I cannot catalogue all these claims here, some particularly troubling ones bear mention.

Consider again Corey Johnson. In addition to the claim already discussed, Johnson sought a reduction of his death sentence under the First Step Act of 2018, 132 Stat. 5194. The District Court denied Johnson's motion, concluding that his death sentence was for a crime that was not a "covered offense." See *United States* v. *Johnson*, No. 3:92–cr–68 (ED Va., Nov. 19, 2020). The Fourth Circuit denied a stay pending appeal. See Order in *United States* v. *Johnson*, No. 20–15, etc. (Jan. 12, 2021). Judge Motz dissented from the denial of stay based on Johnson's First Step Act claim, explaining that the application of the def nition of "covered offense" "present[s] diffcu lt and important issues necessitating adequate consideration by this court." *Id.*, at 9.

Judge Motz was right. In fact, the courts of appeals have divided on the proper way to interpret the statute's "covered offense" def nition.[2] When Johnson sought a stay, this Court had already granted certiorari to resolve a split implicating this question. See Pet. for Cert. in No. 20–5904. Rather than granting Johnson a stay and holding his case for reconsideration in light of this, the Court allowed the Government to execute Johnson without any appellate court ruling on the merits of his claims.

Consider next Brandon Bernard. Bernard, who was only 18 when he committed the crimes for which he was executed, raised credible allegations that the Government secured his death sentence by withholding exculpatory evidence and eliciting knowingly false testimony in violation of *Brady* v. *Maryland*, 373 U. S. 83 (1963), and *Napue* v. *Illinois*, 360 U. S. 264 (1959). But Bernard never received consideration of those claims on the merits. Instead, the Court of Appeals for the Fifth Circuit held that, even

[2] Compare *United States* v. *Smith*, 954 F. 3d 446, 449–450 (CA1 2020) (the Fair Sentencing Act must modify any penalty in the statute of conviction, such as 21 U. S. C. § 841), with *United States* v. *Jones*, 962 F. 3d 1290, 1298 (CA11 2020) (the Act must modify the penalty for the defendant's actual violation).

though Bernard could not have known about the suppressed evidence when he filed his first habeas petition, those claims were subject to the general bar on second-or-successive habeas petitions. *United States* v. *Bernard*, 820 Fed. Appx. 309 (2020) (*per curiam*); see also 28 U. S. C. § 2255(h)(1).

As Bernard correctly argued, the Fifth Circuit's ruling cannot be reconciled with this Court's decision in *Panetti* v. *Quarterman*, 551 U. S. 930 (2007), which held that the bar on second-or-successive petitions does not apply to claims that were not ripe when an inmate filed his first-in-time petition. *Bernard* v. *United States*, 592 U. S. 1139, 1142 (2020) (SOTOMAYOR, J., dissenting). Indeed, the Fifth Circuit's rule makes no sense, as it "perversely rewards the Government for keeping exculpatory information secret until after an inmate's first habeas petition has been resolved." *Id.*, at 1143. Unmoved, this Court denied Bernard's petition for a writ of certiorari and application for a stay, leaving this dangerous precedent in place and, again, condoning the Government's tactics.

Finally, consider Wesley Purkey and Lisa Montgomery, whose executions this Court allowed even though the District Courts concluded they were likely to succeed in showing that they had no "`rational understanding' of why the State want[ed] to execute [them]." *Madison* v. *Alabama*, 586 U. S. 265, 283 (2019) (quoting *Panetti*, 551 U. S., at 958). Wesley Purkey suffered from Alzheimer's disease. Thousands of pages of evidence suggested that he earnestly and steadfastly believed that the Government planned to execute him in retaliation for his "protracted jailhouse lawyering" to expose prison abuses. Electronic Case Filing in No. 1:19–cv–3570, Doc. 1–18 (DDC), p. 12; see also *Barr* v. *Purkey*, 591 U. S. 1034, 1039–1040 (2020) (SOTOMAYOR, J., dissenting). The District Court therefore preliminarily enjoined Purkey's execution. Skipping over the Court of Appeals, the Government sought immediate relief from this Court, which vacated the injunction without comment.

Lisa Montgomery likewise made a "substantial threshold showing" to the District Court that she was incompetent to be executed. See Electronic Case Filing in No. 2:21–cv–20, Doc. 17 (SD Ind.), p. 15. Based on expert evidence that Montgomery was experiencing a dissociative psychotic state, the District Court concluded that her "current mental state is so divorced from reality that she cannot rationally understand the government's rationale

for her execution." *Id.*, at 18. These findings with respect to Purkey and Montgomery raised significant questions as to whether their executions comported with the Constitution. We will never have definitive answers to those questions because this Court sanctioned their executions anyway.

III

There is no matter as "grave as the determination of whether a human life should be taken or spared." *Gregg* v. *Georgia*, 428 U. S. 153, 189 (1976) (opinion of Stewart, Powell, and Stevens, JJ.). That decision is not something to be rushed or taken lightly; there can be no "justice on the fly" in matters of life and death. See *Nken* v. *Holder*, 556 U. S. 418, 427 (2009). Yet the Court has allowed the United States to execute 13 people in six months under a statutory scheme and regulatory protocol that have received inadequate scrutiny, without resolving the serious claims the condemned individuals raised. Those whom the Government executed during this endeavor deserved more from this Court. I respectfully dissent.

JANUARY 19, 2021

Certiorari Dismissed

No. 20–6321. CAMERON *v.* WALRATH, WARDEN. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 813 Fed. Appx. 895.

No. 20–6322. CHRISTIAN *v.* OKLAHOMA. Ct. Crim. App. Okla. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 20–6502. REILLY *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

Miscellaneous Orders

No. 19–1155. ROSEN, ACTING ATTORNEY GENERAL *v.* MING DAI; and

No. 19–1156. ROSEN, ACTING ATTORNEY GENERAL *v.* ALCARAZ-ENRIQUEZ. C. A. 9th Cir. [Certiorari granted *sub nom.* in No. 19–1155, *Barr* v. *Ming Dai*; in No. 19–1156, *Barr* v. *Alcaraz-Enriquez*, 591 U. S. 1080.] Motion of respondents for divided argument granted.

No. 19–1414. UNITED STATES *v.* COOLEY. C. A. 9th Cir. [Certiorari granted, 592 U. S. 1112.] Motion of the Acting Attorney General to dispense with printing joint appendix granted.

No. 20–177. ALLY FINANCIAL INC. *v.* HASKINS ET AL. Sup. Ct. Mo. Joint motion to defer consideration of petition for writ of certiorari granted.

No. 20–6104. PIDANICK *v.* LAROSA ET AL. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [592 U. S. 1149] denied.

No. 20–6295. RAIVELY *v.* WHELIHAN. Super. Ct. N. J., App. Div.;

No. 20–6334. SINGHDEREWA *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL. Ct. App. Cal., 2d App. Dist., Div. 3; and

No. 20–6413. SHEPARD *v.* DEPARTMENT OF VETERANS AFFAIRS ET AL. C. A. 10th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until February 9, 2021, within which to pay the docketing fees required by this Court's Rule 38(a).

No. 20–671. IN RE SHAH. Petition for writ of mandamus denied.

Certiorari Denied

No. 19–1063. DENBY-PETERSON *v.* NU2U AUTO WORLD ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 941 F. 3d 115.

No. 19–8873. DIAZ ET AL. *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 599 S. W. 3d 409.

No. 20–350. FLORES *v.* PFEIFFER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 153.

No. 20–380. IDENIX PHARMACEUTICALS LLC ET AL. *v.* GILEAD SCIENCES, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 941 F. 3d 1149.

No. 20–400. AVERY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 819 Fed. Appx. 749.

No. 20–518. MASTIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 972 F. 3d 1230.

No. 20–648. BONHAM *v.* SUTTO ET AL. Ct. App. Ariz. Certiorari denied.

No. 20–665. COOK *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 20–667. BUSH *v.* CITY OF PITTSBURGH, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 813 Fed. Appx. 767.

No. 20–668. ALLISON *v.* LIOU ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 20–672. GILEWICZ *v.* BRYLIN HOSPITAL ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 34 N. Y. 3d 1037, 138 N. E. 3d 1105.

No. 20–694. EAGLE COVE CAMP & CONFERENCE CENTER, INC., ET AL. *v.* TOWN OF WOODBORO, WISCONSIN, ET AL. Ct. App. Wis. Certiorari denied. Reported below: 2020 WI App 1, 389 Wis. 2d 624, 937 N. W. 2d 293.

No. 20–716. FLORES-MORENO *v.* ROSEN, ACTING ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 971 F. 3d 541.

No. 20–720. GORDON *v.* ROSEN, ACTING ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 962 F. 3d 1344.

No. 20–776. WILLIAMS *v.* JACKSON, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 964 F. 3d 621.

No. 20–786. UNITED STATES EX REL. PORTER *v.* MAGNOLIA HEALTH PLAN, INC. C. A. 5th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 237.

No. 20–790. SPROWL *v.* MERCEDES-BENZ U. S. INTERNATIONAL, INC. C. A. 11th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 473.

No. 20–5643. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 252.

No. 20–5689. BELL *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 811 Fed. Appx. 7.

No. 20–5975. RUTH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 966 F. 3d 642.

No. 20–6275. FORD *v.* PARRIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–6278. SKANDHA *v.* MORONEY. App. Ct. Mass. Certiorari denied.

No. 20–6279. SKANDHA *v.* SUPERIOR COURT OF MASSACHUSETTS, MIDDLESEX COUNTY, ET AL. App. Ct. Mass. Certiorari denied. Reported below: 97 Mass. App. 1113, 144 N. E. 3d 329.

No. 20–6280. SCOTT *v.* COOK. C. A. 8th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 36.

No. 20–6289. RANDOLPH *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 234.

No. 20–6297. BARKER *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–6300. LIETZAU *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 248 Ariz. 576, 463 P. 3d 200.

No. 20–6303. WHATLEY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2020 IL App (1st) 163179–U.

No. 20–6308. WALLACE *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 20–6312. MOHAMMED *v.* ALONSO, DISTRICT JUDGE, ET AL. C. A. 7th Cir. Certiorari denied.

No. 20–6315. NEWSOME *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 828 Fed. Appx. 180.

No. 20–6318. MOHAMMED *v.* ANDERSON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 833 Fed. Appx. 651.

No. 20–6325. DELIMA *v.* WALMART STORES ARKANSAS, LLC. C. A. 8th Cir. Certiorari denied. Reported below: 792 Fed. Appx. 411.

No. 20–6329. ACEDO *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–6331. SAM *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 20–6333. SANCHEZ *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–6337. STANDBERRY *v.* UNITED STATES; and
No. 20–6540. WRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 119.

No. 20–6344. KNIGHT *v.* CHATELAIN ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 971.

No. 20–6349. ODUM *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–6352. G. N. W. *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 20–6353. WILLIAMS *v.* LEWIS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 214.

No. 20–6354. POPLAWSKI *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 20–6355. MCARTY *v.* HUTCHINSON, GOVERNOR OF ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2020 Ark. 190, 600 S. W. 3d 549.

No. 20–6357. COOK *v.* APPELLATE DIVISION OF THE SUPERIOR COURT OF CALIFORNIA, LOS ANGELES. Ct. App. Cal., 2d App. Dist., Div. 5. Certiorari denied.

No. 20–6358. DAWSON *v.* VALDEZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 321.

No. 20–6361. DAVIS *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–6369. SAMUELS *v.* BRNOVICH, ATTORNEY GENERAL OF ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–6393. HUGHES *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied.

No. 20–6395. GRIFFITH *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 35 N. Y. 3d 1109, 157 N. E. 3d 678.

No. 20–6417. ALMONTE-NUNEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 963 F. 3d 58.

No. 20–6422. KMET *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 806 Fed. Appx. 109.

No. 20–6424. JONES *v.* UNITED STATES; and
No. 20–6433. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 333.

No. 20–6441. KEEL *v.* WILKIE, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 830 Fed. Appx. 315.

No. 20–6445. GALLEGOS-ESPINAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 970 F. 3d 586.

No. 20–6452. HOMER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 339.

No. 20–6453. GONZALEZ FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 427.

No. 20–6456. TRAMMEL *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Certiorari denied. Reported below: 2020 Ark. 342, 610 S. W. 3d 158.

No. 20–6457. WATKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 22.

No. 20–6458. WAAGNER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 971 F. 3d 647.

No. 20–6462. CASTRUITA-ESCOBEDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 362.

No. 20–6468. SHAW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 965 F. 3d 921.

No. 20–6469. VALENTINE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 818 Fed. Appx. 156.

No. 20–6471. WASHINGTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 798 Fed. Appx. 148.

No. 20–6472. CORTEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 965 F. 3d 827.

No. 20–6473. ARNOLD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 337.

No. 20–6474. FERMIN BARAJAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 356.

No. 20–6475. ABDALLA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 972 F. 3d 838.

No. 20–6476. ALLEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 237.

No. 20–6478. GRAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 540.

No. 20–6480. FREEMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 964 F. 3d 774.

No. 20–6481. MURILLO MORFIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 759.

No. 20–6483. MATUCK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 20–6494. VERA-GUTIERREZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 964 F. 3d 733.

No. 20–6495. ALFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 924.

No. 20–6496. ALFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 375.

No. 20–6509. GRANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 407.

No. 20–6511. LUGO-GUERRERO, AKA MORAIMA, AKA RIVERA-RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 20–6513. COSTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 964 F. 3d 289.

No. 20–6516. MCGADNEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 963.

No. 20–6517. BASIC *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 965 F. 3d 921.

No. 20–6519. MONDRAGON-HERNANDEZ, AKA ROJAS, ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 819 Fed. Appx. 548.

No. 20–6521. VALDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 964 F. 3d 117.

No. 20–6526. MAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 819 Fed. Appx. 142.

No. 20–6527. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 973 F. 3d 667.

No. 20–6529. WAKEFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 813.

No. 20–6530. MOBLEY *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 651.

No. 20–6535. RUFFIN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 219 A. 3d 997.

No. 20–6543. MOODY *v.* HARRIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–6545. MEADOWS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 434.

No. 20–6548. GUZMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 20–6555. MANAMELA *v.* WARDEN, FEDERAL CORRECTIONAL INSTITUTION FORT DIX. C. A. 3d Cir. Certiorari denied. Reported below: 808 Fed. Appx. 81.

No. 20–6556. BASS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 828 Fed. Appx. 538.

No. 20–6557. CRUZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 826 Fed. Appx. 97.

No. 20–6567. SUMMERVILLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 819 Fed. Appx. 175.

No. 20–6568. JAVIER GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 888.

No. 20–6571. SMITH *v.* BRECKEN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 245.

No. 20–6613. PICKLE *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 306 So. 3d 771.

No. 20–6635. WILLIAMS *v.* WILHELM, WARDEN, ET AL. Ct. App. Neb. Certiorari denied. Reported below: 28 Neb. App. xxvii.

No. 20–6665. PETERS *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 20–231. ALADDIN MANUFACTURING CORP. ET AL. *v.* WATER WORKS AND SEWER BOARD OF THE TOWN CENTRE ET AL. Sup. Ct. Ala. Motion of the Chamber of Commerce of the United States of America et al. for leave to file brief as *amici curiae* granted. Certiorari denied.

No. 20–6487. JOHNSTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 814 Fed. Appx. 142.

Rehearing Denied

No. 19–8807. CEAN *v.* UNITED STATES, 592 U. S. 1114;

No. 19–8886. ERICKSON *v.* COLLINS, JUDGE, SUPERIOR COURT OF ARIZONA, COCHISE COUNTY, ET AL., 592 U. S. 948;

No. 19–8897. SMITH *v.* NORTH CAROLINA, 592 U. S. 948;

No. 20–399. JUNG HYUN CHO ET AL. *v.* SELECT PORTFOLIO SERVICING, INC., ET AL., 592 U. S. 1115;

No. 20–5723. CALHOUN *v.* FLORIDA DEPARTMENT OF CORRECTIONS, 592 U. S. 1108; and

No. 20–5735. PERRY *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 592 U. S. 1108. Petitions for rehearing denied.

No. 20–254. KUANG-BAO OU-YOUNG *v.* ROBERTS, CHIEF JUSTICE, SUPREME COURT OF THE UNITED STATES, ET AL., 592 U. S. 1118. Petition for rehearing denied. THE CHIEF JUSTICE, JUSTICE BREYER, and JUSTICE ALITO took no part in the consideration or decision of this petition.

JANUARY 22, 2021

Miscellaneous Order

No. 20A111. FRANCOIS *v.* WILKINSON, ACTING ATTORNEY GENERAL. C. A. 5th Cir. Application for stay of removal, presented to JUSTICE ALITO, and by him referred to the Court, denied.

JUSTICE SOTOMAYOR, dissenting.

Alex Francois is a 61-year-old Haitian national who came to the United States unlawfully when he was 19 and has lived here ever since. Francois suffers from severe mental illness, including schizophrenia, bipolar disorder, and psychosis. He presents compelling evidence that, if he is removed to Haiti, he will be targeted for cruel and dehumanizing mistreatment because of his mental illness. An Immigration Judge (IJ) therefore granted Francois withholding of removal in 2019, guaranteeing that he would not be sent to Haiti. That should have been the end of this case.

Instead, Francois now faces imminent removal to Haiti. Rather than deferring to the IJ's factual f ndings, as the law requires, the Board of Immigration Appeals (BIA) ignored them and remanded the case back to the IJ for further factf nding. On remand, the IJ reviewed the very same evidentiary record on which it had previously relied to grant Francois relief. This time, however, the IJ denied Francois withholding of removal, contradicting not only its prior decision but also key evidence that the IJ claimed to be crediting. The BIA dismissed Francois' appeal.

Francois is currently seeking review of the BIA's decision before the Court of Appeals for the Fifth Circuit. The Government, however, plans to remove Francois before he can even submit his opening brief. This is exactly the kind of circumstance

that calls for a temporary stay of removal. Francois is likely to prevail on appeal; he will suffer irreparable harm absent a stay; and the public interest strongly favors protecting Francois from wrongful removal and the terrible suffering awaiting him in Haiti. Yet, without explanation, the Fifth Circuit denied a stay. Today, this Court does the same. I dissent.

I

Francois came to the United States in 1979 to reunite with his father, a Haitian exile who became an American citizen. Francois spent much of his life in New York City, where he worked in construction and raised a family, including six children. Two of his children went on to serve in the U. S. Army, including one who deployed to Afghanistan.

According to his father, Francois' struggles with mental illness began in his midforties. He experienced delusions, irritability, and aggression, and as his condition deteriorated, he engaged in unusual behavior such as eating grass and drinking his own urine. Francois also developed a lengthy criminal history, which appears to stem from the effects of his illnesses. He has been hospitalized numerous times, and he is currently being treated with psychotropic medication.

In 2018, the Government sought to have Francois declared removable from the United States because he was not lawfully admitted. The IJ sustained the charge of removability. But the IJ also deemed Francois mentally incompetent and allowed his attorney to apply for withholding of removal on his behalf. Withholding of removal prevents the Government from removing a noncitizen to a country where it is more likely than not that the noncitizen's "life or freedom would be threatened" on account of a protected ground. 8 U. S. C. § 1231(b)(3)(A). There is no dispute in this case that Francois' mental illness is one such protected ground. See App. A to Application for Stay (IJ Decision, p. 5, n. 2).

To prove a likelihood of persecution, Francois submitted an expert declaration explaining that mental illness is poorly understood and stigmatized in Haiti. "[B]izarre, erratic and noncompliant behavior is often responded to with extreme physical punishment, torture, and isolation," including locking the mentally ill in "crawlspaces or other tiny spaces." App. K to Application for Stay 10. The IJ placed "great evidentiary weight" on the

expert's assessment, concluding that Francois more likely than not will be persecuted on account of his mental illness if removed to Haiti. App. A to Application for Stay (IJ Decision, at 5, n. 3). Specifca lly, as a deportee with a criminal record, Francois will face detention in an "overcrowded, disease-infested" prison "lacking in basic necessities such as plumbing and electricity." *Id.*, at 5. Because of his mental illness, Francois' suffering will be "made worse" "due to lack of access to medication or treatment and extreme repressive measures such as physical punishment, torture and isolation." *Ibid.* Even if Francois is not detained, his symptoms will more likely than not "attract the attention of Haitian authorities or private actors" whom the Haitian Government is unwilling or unable to control, "who will persecute him on account of" his mental illness. *Id.*, at 6. Accordingly, the IJ granted Francois withholding of removal.

The Government appealed to the BIA, arguing that the IJ "erred in f nding" that Francois will likely be persecuted on account of his mental illness. App. B to Application for Stay 3. The BIA may not, however, "engage in *de novo* review of f ndings of fact determined by an immigration judge." 8 CFR § 1003.1(d)(3)(i) (2020). Instead, the BIA may review such f ndings "only to determine whether the f ndings of the immigration judge are clearly erroneous." *Ibid.* Under that standard, even if the BIA would interpret the evidentiary record differently, the BIA was required to defer to the IJ's view of the evidence as long as it was "plausible." *Anderson* v. *Bessemer City*, 470 U. S. 564, 574 (1985).

Rather than attempting to f nd clear error, the BIA sidestepped the standard of review by implausibly concluding that the IJ had failed entirely to make certain critical factual f ndings. The BIA remanded with instructions for the IJ to determine "whether [Francois] will be singled out individually for persecution," what "harm [Francois] is likely to suffer in Haiti," and "whether such harm would be on account of his membership in his proposed particular social group" (*i. e.*, the severely mentally ill). App. B to Application for Stay 2.

In reality, the IJ had already repeatedly concluded that Francois "will more likely than not be persecuted on account of" his mental illness, including through "physical punishment, torture and isolation." App. A to Application for Stay (IJ Decision, at 5–6, and n. 3). The IJ thus recognized the BIA's order for what

it was: an instruction to change those findings. "Reviewing the evidentiary record again, in light of the Board's decision," the IJ concluded that Francois would not likely be persecuted on account of his mental illness. App. C to Application for Stay (IJ Decision on Remand, at 4). The IJ admitted no additional evidence to justify its 180-degree turn; it simply recharacterized the old evidence. To take just one example, the IJ claimed on remand that Francois' expert "opine[d] that future persecution on account of [Francois'] mental health issue is possible, while stopping short of saying that it is probable." *Id.*, at 6. In fact, as the IJ recognized in its first decision, the expert clearly found that "it is very likely that Mr. Francois will suffer serious and irreparable harm amounting to torture if deported to Haiti," and that "both his criminal deportee status and mental illness are likely to result in violence." App. K to Application for Stay 30–31.

Francois appealed to the BIA. The BIA acknowledged "extensive evidence in the record of the mistreatment of the mentally ill [in Haiti,] particularly when detained or hospitalized." App. D to Application for Stay 4. It also noted the expert's use of phrases like "`often,'" "`routinely,'" and "`more likely'" to describe the probability of harm to the mentally ill. *Id.*, at 2–3. But this time, the BIA concluded that it was bound by the clear-error standard to respect the IJ's findings and dismissed Francois' appeal.

On December 1, 2020, Francois filed a petition for review with the Fifth Circuit. On December 16, the Government notified Francois that he would be removed to Haiti on December 22, just six days later. Francois requested a stay of removal from the Fifth Circuit so that he could complete his appeal. Without explanation, the Fifth Circuit denied a stay. App. I to Application for Stay. It then set a briefing schedule beginning in February 2021.

Francois now seeks a stay of removal from this Court.

II

"It takes time to decide a case on appeal," and "if a court takes the time it needs, the court's decision may in some cases come too late for the party seeking review." *Nken* v. *Holder*, 556 U. S. 418, 421 (2009). This is such a case. If Francois is removed to Haiti as the Government intends, he will suffer extreme harm

before any federal court has had an opportunity to address his claims for relief.

Courts have an important tool for addressing such a situation: the power to issue a temporary stay. A stay "allows an appellate court to act responsibly," preventing the need for "justice on the fy" or, worse, the denial of justice altogether. *Id.*, at 427. The decision to issue a stay is guided by four factors: "`(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.'" *Id.*, at 434. The frst two factors "are the most critical." *Ibid.*

Under this standard, Francois is plainly entitled to a stay. Most importantly, he has shown a strong likelihood that his appeal will succeed on the merits. As the IJ originally recognized, the record clearly proves that Francois more likely than not will be persecuted on account of his mental illness if removed to Haiti. In its frst decision remanding the case, the BIA abused its discretion by ignoring the IJ's f ndings. See, *e. g.*, *Vitug* v. *Holder*, 723 F. 3d 1056, 1064 (CA9 2013) (f nding an abuse of discretion where "the BIA ignored factual f ndings of the IJ that were key to the IJ's holding"). Exacerbating the BIA's error, the IJ on remand issued a decision that is entirely unsupported by the record. The expert, whom the IJ credited, was clear: Francois "will be specif cally targeted for violence by prison and police offcia ls, over and above the usual harsh treatment of Haitian criminal deportees, when—as his psychiatric records show—he exhibits symptoms of his mental conditions that will be disturbing and disruptive." App. K to Application for Stay 31.

For the same reasons, Francois has shown that he will suffer irreparable harm absent a stay. As the BIA acknowledged, if removed to Haiti, Francois "will not receive the treatment he needs for his mental illness," and he "will be detained" in "deplorable" conditions where "extreme repressive measures are used against detainees." App. D to Application for Stay 1. As his mental condition deteriorates, he will fall prey to the very persecution that entitles him to relief on appeal.

Finally, the public interest weighs heavily in Francois' favor. The public has a strong interest in preventing noncitizens from being wrongfully removed, "particularly to countries where they

are likely to face substantial harm." *Nken*, 556 U. S., at 436; see also *Yusupov* v. *Attorney Gen. of U. S.*, 650 F. 3d 968, 977 (CA3 2011) (explaining that withholding of removal effectuates the United States' treaty commitment to protect refugees). That interest is heightened because Francois is currently receiving medical treatment and is supported here by his family. The Government has offered no compelling reason that Francois should be robbed of these critical lifelines before he has had a chance to be heard in court.

In light of the foregoing, the Fifth Circuit's decision to deny a stay was an abuse of its discretion. See *Dada* v. *Mukasey*, 554 U. S. 1, 21 (2008) (noting that it "may constitute an abuse of discretion" to deny a stay where a noncitizen "states nonfrivolous grounds" for relief). Today, this Court compounds the Fifth Circuit's error by refusing to provide the temporary relief necessary to allow Francois' appeal to be heard.*

That leaves only the Government itself to avert this unnecessary tragedy. The Government has long exercised its discretion to halt removal temporarily, either through an administrative stay or deferred action. See 8 CFR § 241.6(a); *Department of Homeland Security* v. *Regents of Univ. of Cal.*, 591 U. S. 1, 10 (2020). That discretion is warranted here. As his father wrote in a letter to the IJ, Francois is "at his weakest and at his lowest" point.

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*One difference between the factors in *Nken* v. *Holder*, 556 U. S. 418 (2009), and this Court's traditional stay criteria is this Court's consideration of whether a case raises signifcant issues that merit plenary review (sometimes called "cert-worthiness"). See *Maryland* v. *King*, 567 U. S. 1301, 1302 (2012) (ROBERTS, C. J., in chambers). This inquiry is complicated in cases such as this one where there is not yet a decision by the court of appeals, which often informs whether a case presents substantial questions of law. Even in limited emergency brief ng, Francois identifes several issues that the Fifth Circuit may address, including the adequacy of procedural safeguards for mentally incompetent noncitizens in removal proceedings and the due process concerns created by the BIA's remand. In addition, this Court does, on occasion, intervene in cases to correct obvious errors made below. See, *e. g.*, *Salazar-Limon* v. *Houston*, 581 U. S. 946, 954 (2017) (SOTOMAYOR, J., dissenting from denial of certiorari) (citing cases). This Court has stepped in, for instance, when it believed important factual f ndings were "overlooked." See *Wetzel* v. *Lambert*, 565 U. S. 520, 524 (2012) (*per curiam*). A stay is not a conclusive determination that this Court will grant certiorari. It simply gives this Court time to consider these issues.

App. N to Application for Stay 20. For now, all he asks is the small grace, to which he is legally entitled, of being allowed to remain in the country while he pursues his substantial claims for relief. Because I would grant him that opportunity, I dissent.

JANUARY 25, 2021

Appointment of Reporter of Decisions

It is ordered that Rebecca Anne Womeldorf be appointed Reporter of Decisions of this Court to succeed Christine Luchok Fallon, effective January 25, 2021, and she is charged with the duty of reporting the decisions of the present Term which have not been reported prior to January 25, 2021.

Certiorari Granted—Vacated and Remanded

No. 19–8695. GUTIERREZ *v.* SAENZ ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. The June 12, 2020, order of the United States Court of Appeals for the Fifth Circuit granting the motion to vacate the stay of execution previously issued by the United States District Court for the Southern District of Texas is vacated. The case is remanded to the Court of Appeals with instructions to remand the case to the District Court for further and prompt consideration of the merits of petitioner's underlying claims regarding the presence of a spiritual adviser in the execution chamber in light of the District Court's November 24, 2020, findings of fact. Although this Court's stay of execution shall terminate upon the sending down of the judgment of this Court, disposition of the petition for writ of certiorari is without prejudice to a renewed application regarding stay of execution should petitioner's execution be rescheduled before resolution of his claims regarding the presence of a spiritual adviser in the execution chamber.

No. 20–305. PLANNED PARENTHOOD CENTER FOR CHOICE ET AL. *v.* ABBOTT, GOVERNOR OF TEXAS, ET AL. (two judgments). C. A. 5th Cir. Certiorari granted, judgments vacated, and case remanded with instructions to dismiss the case as moot. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950). Reported below: 954 F. 3d 772 (first judgment); 956 F. 3d 696 (second judgment).

No. 20–330. TRUMP, PRESIDENT OF THE UNITED STATES *v.* CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON ET AL. C. A. 2d Cir. Motions of Scholar Seth Barrett Tillman et al. and Professor Lawrence A. Hamermesh for leave to file briefs as *amici curiae* granted. Certiorari granted, judgment vacated, and case remanded with instructions to dismiss the case as moot. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950). Reported below: 953 F. 3d 178.

No. 20–331. TRUMP, PRESIDENT OF THE UNITED STATES *v.* DISTRICT OF COLUMBIA ET AL. C. A. 4th Cir. Motion of Scholar Seth Barrett Tillman et al. for leave to file brief as *amici curiae* granted. Certiorari granted, judgment vacated, and case remanded with instructions to dismiss the case as moot. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950). Reported below: 958 F. 3d 274.

No. 20–482. SLATERY, ATTORNEY GENERAL OF TENNESSEE, ET AL. *v.* ADAMS & BOYLE, P. C., ET AL. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded with instructions to direct the District Court to vacate as moot its April 17, 2020, order granting plaintiffs' motion for a preliminary injunction. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950). Reported below: 956 F. 3d 913.

Certiorari Dismissed

No. 20–6410. SEPEHRY-FARD *v.* COURT OF APPEAL OF CALIFORNIA, SIXTH APPELLATE DISTRICT, ET AL. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 20M47. LINSANGAN *v.* TAIJERON ET AL. Motion for leave to proceed as a veteran denied.

No. 20M48. MATTHEWS *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION; and

No. 20M49. JENKINS *v.* FLORIDA DEPARTMENT OF CORRECTIONS. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 154, Orig. NEW HAMPSHIRE *v.* MASSACHUSETTS. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 19–1257. BRNOVICH, ATTORNEY GENERAL OF ARIZONA, ET AL. *v.* DEMOCRATIC NATIONAL COMMITTEE ET AL.; and

No. 19–1258. ARIZONA REPUBLICAN PARTY ET AL. *v.* DEMOCRATIC NATIONAL COMMITTEE ET AL. C. A. 9th Cir. [Certiorari granted, 591 U. S. 1081.] Motion of petitioners for divided argument granted. Motion of respondents for divided argument granted.

No. 20–18. LANGE *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist., Div. 5. [Certiorari granted, 592 U. S. 1234.] Motion of petitioner for divided argument granted. Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 20–138. BIDEN, PRESIDENT OF THE UNITED STATES, ET AL. *v.* SIERRA CLUB ET AL.; and BIDEN, PRESIDENT OF THE UNITED STATES, ET AL. *v.* CALIFORNIA ET AL. C. A. 9th Cir. [Certiorari granted *sub nom. Trump* v. *Sierra Club*; *Trump* v. *California*, 592 U. S. 1024.] Motion of respondents for divided argument granted.

No. 20–865. IN RE BRITTON-HARR. Petition for writ of habeas corpus denied.

No. 20–6677. IN RE WRIGHT. Petition for writ of mandamus denied.

Certiorari Denied

No. 19–1130. DANIELSON ET AL. *v.* INSLEE, GOVERNOR OF WASHINGTON, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 945 F. 3d 1096.

No. 20–183. STAIR *v.* JACKSON. C. A. 8th Cir. Certiorari denied. Reported below: 944 F. 3d 704.

No. 20–208. LIBERTY MUTUAL FIRE INSURANCE CO. *v.* VOLUNGIS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 414.

No. 20–245. NELSON *v.* RIVERA. C. A. 6th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 983.

No. 20–422. LEE *v.* OHIO EDUCATION ASSN. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 951 F. 3d 386.

No. 20–486. OGLE *v.* OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, AFSCME LOCAL 11, AFL–CIO. C. A. 6th Cir. Certiorari denied. Reported below: 951 F. 3d 794.

No. 20–580. MALLATERE *v.* TOWN OF BOONE, NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 213.

No. 20–591. GREER ET AL. *v.* MIRLIS. C. A. 2d Cir. Certiorari denied. Reported below: 952 F. 3d 36.

No. 20–604. INFOBIONIC, INC. *v.* CARDIONET, LLC, ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 955 F. 3d 1358.

No. 20–621. HUA CAI *v.* HUNTSMAN CORP. C. A. 10th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 639.

No. 20–691. LIH BIN SHIH *v.* PARNELL. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 20–695. PIERSING *v.* DOMINO'S PIZZA FRANCHISING LLC ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 962 F. 3d 842.

No. 20–696. BROWNSTEIN *v.* LINDSAY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 812 Fed. Appx. 75.

No. 20–700. SMITH *v.* SYHADLEY, LLC. Ct. App. Wash. Certiorari denied.

No. 20–702. STILES *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 596 S. W. 3d 361.

No. 20–704. SANTANA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 20–706. STONE CREEK, INC. *v.* OMNIA ITALIAN DESIGN, INC. C. A. 9th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 459.

No. 20–732. WYCHE *v.* OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION. C. A. 2d Cir. Certiorari denied.

No. 20–735. KOSHKALDA *v.* SEIKO EPSON CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 837.

No. 20–738. GROCHOWSKI, AS ADMINISTRATOR OF THE ESTATE OF GROCHOWSKI, DECEASED, ET AL. *v.* CLAYTON COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 961 F. 3d 1311.

No. 20–739. LEVIN *v.* FRANK, INDIVIDUALLY AND AS CORPORATION COUNSEL FOR THE CITY OF BINGHAMTON, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 803 Fed. Appx. 562.

No. 20–742. BRUCE *v.* AZAR, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 826 Fed. Appx. 643.

No. 20–744. WIGGINTON *v.* UNIVERSITY OF MISSISSIPPI ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 964 F. 3d 329.

No. 20–750. MURPHY *v.* STACY, CIRCUIT COURT JUDGE. C. A. 11th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 677.

No. 20–757. ASHFORD *v.* OFFICE FOR COUNSEL FOR DISCIPLINE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 446.

No. 20–765. WILLMAN *v.* WILKINSON, ACTING ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 972 F. 3d 819.

No. 20–793. KHOURY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–848. D. A. S. *v.* MADISON COUNTY DEPARTMENT OF HUMAN RESOURCES. Ct. Civ. App. Ala. Certiorari denied.

No. 20–5133. BAXTER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 951 F. 3d 128.

No. 20–5748. HOLLIDAY *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2017–01921 (La. 1/29/20), 340 So. 3d 648.

No. 20–5762. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 151.

No. 20–5917. MALMSTROM *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 967 F. 3d 1.

No. 20–5923. FLORES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 20–6094. BUSH *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 295 So. 3d 179.

No. 20–6371. MOSELEY *v.* CLARKE. C. A. 7th Cir. Certiorari denied.

No. 20–6379. WHITE *v.* ST. LAWRENCE CATHOLIC SCHOOLS. C. A. 7th Cir. Certiorari denied.

No. 20–6384. MCCANTS *v.* SILVA. C. A. 1st Cir. Certiorari denied.

No. 20–6385. DEVERS *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 306 Neb. 429, 945 N. W. 2d 470.

No. 20–6391. HARE *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 505 Mich. 1127, 944 N. W. 2d 119.

No. 20–6396. BEVER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 2020 OK CR 13, 467 P. 3d 693.

No. 20–6398. ALLEN *v.* POLLARD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 20–6404. LIGGINS *v.* VASHAW, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–6411. RAMIREZ *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 20–6416. BYRD *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 192.

No. 20–6454. ZIMMERMAN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 20–6479. GARCIA *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 152 N. E. 3d 1082.

No. 20–6503. RAUDENBUSH *v.* MONROE COUNTY, TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied.

No. 20–6504. BARNES *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 284.

No. 20–6510. FORD *v.* BUDDE. Ct. App. Nev. Certiorari denied. Reported below: 136 Nev. 827, 461 P. 3d 900.

No. 20–6520. VIRIYAPANTHU *v.* STATE BAR OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 312.

No. 20–6553. MCGINNIS *v.* SOCIAL SECURITY ADMINISTRATION. C. A. 3d Cir. Certiorari denied. Reported below: 808 Fed. Appx. 127.

No. 20–6554. PIKE *v.* UNITED STATES; and
No. 20–6589. PORTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 969 F. 3d 144.

No. 20–6559. VILLARREAL-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 892.

No. 20–6562. SALINAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 259.

No. 20–6566. BELTRAN DEL RIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 900.

No. 20–6575. JACKSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–6576. PARKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 377.

No. 20–6577. MONDRAGON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 829 Fed. Appx. 56.

No. 20–6580. PEEPLES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 962 F. 3d 677.

No. 20–6584. OLIVE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 20–6588. GORDON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 20–6590. PIKE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 979 F. 3d 364.

No. 20–6591. VANEGAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 257.

No. 20–6594. HERNANDEZ-ZOZAYA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 826 Fed. Appx. 144.

No. 20–6596. ABNEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 185.

No. 20–6597. AGUILAR *v.* CHAPMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–6606. MILLER *v.* VON BLANKENSEE. C. A. 9th Cir. Certiorari denied.

No. 20–6609. MORENO CERVANTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 251.

No. 20–6618. MALACHOWSKI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 20–6619. CARRASCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 708.

No. 20–6628. LAMB *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 20–6630. ESTRADA *v.* BRNOVICH, ATTORNEY GENERAL OF ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–6632. VALDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 975 F. 3d 63.

No. 20–6638. BRENNERMAN, AKA SOETAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 818 Fed. Appx. 25.

No. 20–6641. ANGEL HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 253.

No. 20–6647. KNICELY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 821.

No. 20–6655. SANCHEZ OCHOA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 977 F. 3d 354.

No. 20–6656. BAZAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 964 F. 3d 439.

No. 20–6657. BARRIENTOS-OSORIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 282.

No. 20–6660. GUMBS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 964 F. 3d 1340.

No. 20–6671. COX, AKA CUNNINGHAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 963 F. 3d 915.

No. 20–6673. DIEHL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 800.

No. 20–6674. CHEVALLIER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 828 Fed. Appx. 882.

No. 20–6683. DIAZ-GUZMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 19–1104. JANUS *v.* AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 31, ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 942 F. 3d 352.

No. 19–1126. MOONEY *v.* ILLINOIS EDUCATION ASSN. ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 942 F. 3d 368.

No. 20–20. CASANOVA *v.* INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL 701. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition.

No. 20–60. SILVER *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 948 F. 3d 538.

JUSTICE GORSUCH, with whom JUSTICE THOMAS joins, dissenting.

Normally, extortion and bribery are treated as distinct crimes. In *Evans* v. *United States*, 504 U. S. 255 (1992), however, this Court confated them for purposes of the Hobbs Act when a public offcia l is the defendant. *Id.*, at 260. Chief Justice Rehnquist and Justices Scalia, THOMAS, and BREYER have all questioned that judgment. See *id.*, at 278 (THOMAS, J., joined by Rehnquist, C. J., and Scalia, J., dissenting); *Ocasio* v. *United States*, 578 U. S. 282, 300 (2016) (BREYER, J., concurring); *id.*, at 301–302 (THOMAS, J., dissenting). I would have granted this case to reconsider *Evans* in light of these thoughtful criticisms.

No. 20–82. KANE COUNTY, UTAH, ET AL. *v.* UNITED STATES ET AL.; and

No. 20–96. UNITED STATES *v.* KANE COUNTY, UTAH, ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of these petitions. Reported below: 928 F. 3d 877.

No. 20–639. CALVARY CHAPEL DAYTON VALLEY *v.* SISOLAK, GOVERNOR OF NEVADA, ET AL. C. A. 9th Cir. Certiorari before judgment denied.

No. 20–678. M&T BANK CORP. ET AL. *v.* JAROSLAWICZ ET AL. C. A. 3d Cir. Motion of Securities Industry and Financial Markets Association et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 962 F. 3d 701.

No. 20–784. SCHMIDT *v.* BRAITHWAITE, SECRETARY OF THE NAVY. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 806 Fed. Appx. 10.

No. 20–800. BARNETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 20–5733. RUMLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 952 F. 3d 538.

No. 20–6637. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 20–6648. EDWARDS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition.

No. 20–6666. ECCLESTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition.

Rehearing Denied

No. 19–8006. GREINER *v.* MACOMB COUNTY, MICHIGAN, ET AL., 592 U. S. 925;

No. 19–8806. DIXON *v.* AMES, SUPERINTENDENT, MOUNT OLIVE CORRECTIONAL COMPLEX, 592 U. S. 943;

No. 20–278. SMITH *v.* WILKIE, SECRETARY OF VETERANS AFFAIRS, ET AL., 592 U. S. 1114;

No. 20–497. AZEEZ *v.* WEST VIRGINIA, 592 U. S. 1106;

No. 20–5027. ALLRED *v.* UTTECHT, WARDEN, 592 U. S. 959;

No. 20–5842. YANG MEI *v.* MAYOR AND CITY COUNCIL OF BALTIMORE, 592 U. S. 1089; and

No. 20–6091. HOLLIE *v.* WILKIE, SECRETARY OF VETERANS AFFAIRS, 592 U. S. 1132. Petitions for rehearing denied.

JANUARY 28, 2021

Dismissals Under Rule 46

No. 20–6488. MONTANO *v.* OAKLAND COUNTY CIRCUIT COURT JUDGE. Sup. Ct. Mich. Certiorari dismissed under this Court's Rule 46.

No. 20–6489. MONTANO *v.* WIMMER; MONTANO *v.* WIMMER; and MAM *v.* IAW. Sup. Ct. Mich. Certiorari dismissed under this Court's Rule 46.

No. 20–6490. MONTANO *v.* OAKLAND COUNTY CIRCUIT COURT JUDGE. Sup. Ct. Mich. Certiorari dismissed under this Court's Rule 46.

No. 20–6491. IN RE MONTANO. Petition for writ of mandamus dismissed under this Court's Rule 46.

FEBRUARY 1, 2021

Miscellaneous Order

No. 20A116 (20–826). BROWN, ACTING WARDEN *v.* DAVENPORT. Application to recall and stay the mandate, presented to JUSTICE KAVANAUGH, and by him referred to the Court, granted, and the mandate of the United States Court of Appeals for the Sixth Circuit in case No. 17–2267 is recalled and stayed pending disposition of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court. JUSTICE SOTOMAYOR would deny the application.

February 3, 2021

Miscellaneous Order

No. 19–1212. Mayorkas, Secretary of Homeland Security, et al. *v.* Innovation Law Lab et al. C. A. 9th Cir. [Certiorari granted *sub nom. Wolf* v. *Innovation Law Lab*, 592 U. S. 1243.] Motion to hold further briefing in abeyance and to remove the case from the February 2021 argument calendar granted.

No. 20–138. Biden, President of the United States, et al. *v.* Sierra Club et al.; and Biden, President of the United States, et al. *v.* California et al. C. A. 9th Cir. [Certiorari granted *sub nom. Trump* v. *Sierra Club*; *Trump* v. *California*, 592 U. S. 1024.] Motion to hold further briefing in abeyance and to remove the case from the February 2021 argument calendar granted.

Certiorari Granted

No. 19–1039. PennEast Pipeline Co., LLC *v.* New Jersey et al. C. A. 3d Cir. Certiorari granted. In addition to the question presented by the petition, the parties are directed to brief and argue the following question: "Did the Court of Appeals properly exercise jurisdiction over this case?" Case will be set for argument in the April 2021 argument session. Reported below: 938 F. 3d 96.

February 5, 2021

Miscellaneous Orders

No. 20A136 (20–746). South Bay United Pentecostal Church et al. *v.* Newsom, Governor of California, et al. Application for injunctive relief, presented to Justice Kagan, and by her referred to the Court, granted in part. Respondents are enjoined from enforcing the Blueprint's Tier 1 prohibition on indoor worship services against applicants pending disposition of the petition for writ of certiorari. The application is denied with respect to the percentage capacity limitations, and respondents are not enjoined from imposing 25% capacity limitation on indoor worship services in Tier 1. The application is denied with respect to the prohibition on singing and chanting during indoor

services. This order is without prejudice to applicants presenting new evidence to the District Court that the State is not applying the percentage capacity limitations or the prohibition on singing and chanting in a generally applicable manner. Should the petition for writ of certiorari be denied, this order shall terminate automatically. In the event the petition for writ of certiorari is granted, the order shall terminate upon the sending down of the judgment of this Court.

JUSTICE THOMAS and JUSTICE GORSUCH would grant the application in full. JUSTICE ALITO would grant the application with respect to all of the capacity restrictions on indoor worship services and the prohibition against indoor singing and chanting, and would stay for 30 days an injunction against the percentage attendance caps and the prohibition against indoor singing and chanting. JUSTICE ALITO would have the stay lift in 30 days unless the State demonstrates clearly that nothing short of those measures will reduce the community spread of COVID–19 at indoor religious gatherings to the same extent as do the restrictions the State enforces with respect to other activities it classifes as essential.

CHIEF JUSTICE ROBERTS, concurring.

As I explained the last time the Court considered this evolving case, federal courts owe signifcant deference to politically accountable offcia ls with the "background, competence, and expertise to assess public health." *South Bay United Pentecostal Church* v. *Newsom*, 590 U. S. 965, 967 (2020) (opinion concurring in denial of application for injunctive relief). The State has concluded, for example, that singing indoors poses a heightened risk of transmitting COVID–19. I see no basis in this record for overriding that aspect of the state public health framework. At the same time, the State's present determination—that the maximum number of adherents who can safely worship in the most cavernous cathedral is zero—appears to refec t not expertise or discretion, but instead insuffcient appreciation or consideration of the interests at stake.

I adhere to the view that the "Constitution principally entrusts the safety and the health of the people to the politically accountable offcia ls of the States." *Ibid.* (internal quotation marks and alteration omitted). But the Constitution also entrusts the pro-

tection of the people's rights to the Judiciary—not despite judges being shielded by life tenure, see *post*, at 1254 (KAGAN, J., dissenting), but because they are. Deference, though broad, has its limits.

JUSTICE BARRETT, with whom JUSTICE KAVANAUGH joins, concurring.

I agree with JUSTICE GORSUCH's statement, save its contention that the Court should enjoin California's prohibition on singing and chanting during indoor services. The applicants bore the burden of establishing their entitlement to relief from the singing ban. In my view, they did not carry that burden—at least not on this record. As the case comes to us, it remains unclear whether the singing ban applies across the board (and thus constitutes a neutral and generally applicable law) or else favors certain sectors (and thus triggers more searching review). Of course, if a chorister can sing in a Hollywood studio but not in her church, California's regulations cannot be viewed as neutral. But the record is uncertain, and the decisions below unfortunately shed little light on the issue. As the order notes, however, the applicants remain free to show that the singing ban is not generally applicable and to advance their claim accordingly.

Statement of JUSTICE GORSUCH, with whom JUSTICE THOMAS and JUSTICE ALITO join.

Often, courts addressing First Amendment free exercise challenges face diffcu lt questions about whether a law refec ts "`subtle departures from neutrality,'" "`religious gerrymander[ing],'" or "impermissible targeting" of religion. *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520, 534–535 (1993). But not here. Since the arrival of COVID–19, California has openly imposed more stringent regulations on religious institutions than on many businesses. The State's spreadsheet summarizing its pandemic rules even assigns places of worship their own row. See App. to Emergency Application for Writ of Injunction, App. G–3. At "Tier 1," applicable today in most of the State, California forbids any kind of indoor worship. Meanwhile, the State allows most retail operations to proceed indoors with 25% occupancy, and other businesses to operate at 50% occupancy or more. See *ibid.*; see also 985 F. 3d 1128, App. A (CA9 2021). Apparently, California is the only State in the

country that has gone so far as to ban *all* indoor religious services. See Brief for Becket Fund for Religious Liberty as *Amicus Curiae* 5–6.

When a State so obviously targets religion for differential treatment, our job becomes that much clearer. As the Ninth Circuit recognized, regulations like these violate the First Amendment unless the State can show they are the least restrictive means of achieving a compelling government interest. 985 F. 3d, at 1142.

In cases implicating this form of "strict scrutiny," courts nearly always face an individual's claim of constitutional right pitted against the government's claim of special expertise in a matter of high importance involving public health or safety. It has never been enough for the State to insist on deference or demand that individual rights give way to collective interests. Of course we are not scientists, but neither may we abandon the feld when government offcia ls with experts in tow seek to infringe a constitutionally protected liberty. The whole point of strict scrutiny is to test the government's assertions, and our precedents make plain that it has always been a demanding and rarely satisfed standard. See *Lukumi*, 508 U. S., at 546. Even in times of crisis—perhaps *especially* in times of crisis—we have a duty to hold governments to the Constitution.

Still, California says it can thread the needle. It insists that religious worship is so different that it demands especially onerous regulation. The State offers essentially four reasons why: It says that religious exercises involve (1) large numbers of people mixing from different households; (2) in close physical proximity; (3) for extended periods; (4) with singing.

No one before us disputes that factors like these may increase the risk of transmitting COVID–19. And no one need doubt that the State has a compelling interest in reducing that risk. This Court certainly is not downplaying the suffering many have experienced in this pandemic. But California errs to the extent it suggests its four factors are always present in worship, or always absent from the other secular activities its regulations allow. Nor has California sought to explain why it cannot address its legitimate concerns with rules short of a total ban. Each of the State's shortcomings are telltale signs this Court has long used to identify laws that fail strict scrutiny. See, *e. g.*, *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 793 (1978) (The State's

proffered "purpose is belied, however, by the provisions of the statute, which are both underinclusive and overinclusive.").

Consider California's arguments in turn. The State presumes that worship inherently involves a large number of people. Never mind that scores might pack into train stations or wait in long checkout lines in the businesses the State allows to remain open. Never mind, too, that some worshippers may seek only to pray in solitude, go to confession, or study in small groups. See *Harvest Rock Church, Inc.* v. *Newsom*, App. to Emergency Application for Writ of Injunction, No. 20A137, Exh. A, No. 20–56357, p. 4, n. 1 (CA9, Jan. 25, 2021) (O'Scannlain, J., specially concurring). Nor does California explain why the less restrictive option of limiting the number of people who may gather at one time is insuffcient for houses of worship, even though it has found that answer adequate for so many stores and businesses.

Next, the State tells us that worshippers are sure to seek close physical interactions. It touts its mild climate, too, suggesting that worshippers might enjoy more space outdoors. Yet, California is not as concerned with the close physical proximity of hairstylists or manicurists to their customers, whom they touch and remain near for extended periods. The State does not force them or retailers to do all their business in parking lots and parks. And California allows people to sit in relatively close proximity inside buses too. Nor, again, does California explain why the narrower options it thinks adequate in many secular settings—such as social distancing requirements, masks, cleaning, plexiglass barriers, and the like—cannot suffice here. Especially when those measures are in routine use in religious services across the country today.

California worries that worship brings people together for too much time. Yet, California does not limit its citizens to running in and out of other establishments; no one is barred from lingering in shopping malls, salons, or bus terminals. Nor, yet again, has California explained why more narrowly tailored options, like a reasonable limit on the length of indoor religious gatherings, would fail to meet its concerns.

When it comes to each of the frst three factors, California singles out religion for worse treatment than many secular activities. At the same time, the State fails to explain why narrower options it fnds suffcient in secular contexts do not satisfy its legitimate interests. Recently, this Court made it abundantly

clear that edicts like California's fail strict scrutiny and violate the Constitution. See *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 592 U. S. 14 (2020) (*per curiam*). Today's order should have been needless; the lower courts in these cases should have followed the extensive guidance this Court already gave.[1]

If I have a quibble with the Court's order, it is with how it addresses California's final factor, singing. While the Court's order requires California to allow churches to open, it also permits California to enforce, for now, a categorical ban on singing during services. This much might seem understandable. California has sensibly expressed concern that singing may be a particularly potent way to transmit the disease, and it has banned singing not just at indoor worship services, but at indoor private gatherings, schools, and restaurants too.

But, on further inspection, the singing ban may not be what it first appears. It seems California's powerful entertainment industry has won an exemption.[2] So, once more, we appear to have

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[1] While today's case concerns the total ban on indoor worship found in "Tier 1," nothing in our order precludes future challenges to the other disparate occupancy caps applicable to places of worship, particularly in "Tiers" 2 through 4. See App. to Emergency Application for Writ of Injunction, App. G–3.

[2] There is some confusion over what rules actually apply to Hollywood but I would not allow the government officials who created California's complex regime to benefit from its confusing nature. The district court did not address the singing ban, and the Ninth Circuit applied rational-basis review because it was not convinced that *anyone* is permitted to sing indoors in California. 985 F. 3d. 1128, 1152 (CA9 2021). But the record suggests that music, film, and television studios *are* permitted to sing indoors. See Record in No. 20–56358, Doc. 18–4 (CA9), p. 124 (decl. of Screen Actors Guild General Counsel) ("Singing in larger groups [inside the studio] is permitted but only . . . with additional protections."). California's most recent edict prohibits singing at "private" "social situations" as well as "activities protected by the First Amendment to the extent they are not already permitted by other guidance." California Dept. of Public Health, Guidance for the Prevention of COVID–19 Transmission for Gatherings (updated Nov. 13, 2020). No one seems to know exactly how far this language stretches, but it seems unlikely to apply to the entertainment industry, which has its own governing guidance. And California does not squarely deny as much here. See Brief in Opposition 51–52, and n. 52. As the Court recognizes, though, nothing in today's order precludes future relief on this claim either.

a State playing favorites during a pandemic, expending considerable effort to protect lucrative industries (casinos in Nevada; movie studios in California) while denying similar largesse to its faithful. See, *e. g., Calvary Chapel Dayton Valley* v. *Sisolak*, 591 U. S. 1042, 1050 2020) (GORSUCH, J., dissenting from denial of application for injunction relief).

Once more, too, the State has not explained how a total ban on religious singing is narrowly tailored to its legitimate public health concerns. Even if a full congregation singing hymns is too risky, California does not explain why even a single masked cantor cannot lead worship behind a mask and a plexiglass shield. Or why even a lone muezzin may not sing the call to prayer from a remote location inside a mosque as worshippers f le in. The Ninth Circuit sought to defend California's uneven regime by observing that the entertainment industry has adopted COVID–19 testing protocols. See 985 F. 3d at 1146. But, if that's true, it is unclear why California's religious institutions might be denied a similar opportunity. Rather than assume such testing is infeasible, California might have at least offered the option, or sought to adapt it to churches. In my view, the State must do more to tailor the requirements of public health to the rights of its people. The Court's order today at least allows the applicants to press these points on remand.

No doubt, California will argue on remand, as it has before, that its prohibitions are merely temporary because vaccinations are underway. But the State's "temporary" ban on indoor worship has been in place since August 2020, and applied routinely since March. California no longer asks its movie studios, malls, and manicurists to wait. And one could be forgiven for doubting its asserted timeline. Government actors have been moving the goalposts on pandemic-related sacrifces for months, adopting new benchmarks that always seem to put restoration of liberty just around the corner. As this crisis enters its second year—and hovers over a second Lent, a second Passover, and a second Ramadan—it is too late for the State to defend extreme measures with claims of temporary exigency, if it ever could. Drafting narrowly tailored regulations can be diffcu lt. But if Hollywood may host a studio audience or f lm a singing competition while not a single soul may enter California's churches, synagogues, and mosques, something has gone seriously awry.

JUSTICE KAGAN, with whom JUSTICE BREYER and JUSTICE SOTOMAYOR join, dissenting.

Justices of this Court are not scientists. Nor do we know much about public health policy. Yet today the Court displaces the judgments of experts about how to respond to a raging pandemic. The Court orders California to weaken its restrictions on public gatherings by making a special exception for worship services. The majority does so even though the State's policies treat worship just as favorably as secular activities (including political assemblies) that, according to medical evidence, pose the same risk of COVID transmission. Under the Court's injunction, the State must instead treat worship services like secular activities that pose a much lesser danger. That mandate defies our caselaw, exceeds our judicial role, and risks worsening the pandemic.

Start with the governing law. We have held time and again that the First Amendment demands "neutrality" in actions affecting religion. *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520, 532 (1993). A government cannot put limits on religious conduct if it "fail[s] to prohibit nonreligious conduct that endangers" the government's interests "in a similar or greater degree." *Id.*, at 543. That principle, though, has a corollary: The "Constitution does not require things which are different in fact . . . to be treated in law as though they were the same." *Plyler* v. *Doe*, 457 U. S. 202, 216 (1982). So "States must treat like cases alike but may treat unlike cases accordingly." *Vacco* v. *Quill*, 521 U. S. 793, 799 (1997); see *Lukumi*, 508 U. S., at 542.[1]

California's response to the COVID pandemic satisfes that neutrality rule by regulating worship services the same as other activities "where large groups of people [come together] in close proximity for extended periods of time." *South Bay United Pentecostal Church* v. *Newsom*, 590 U. S. 965, 966 (2020) (ROBERTS, C. J., concurring in denial of application for injunctive relief). The restricted activities include attending a worship service or political meeting; going to a lecture, movie, play, or concert; and frequenting a restaurant, winery, or bar. So the activities are both religious and secular—and many of the secular gatherings,

[1] Only if a government fails this neutrality test must its policy "be justifed by a compelling government interest and . . . be narrowly tailored to advance that interest." *Lukumi*, 508 U. S., at 531–532.

too, are constitutionally protected. In all those communal activities, California requires mask wearing and social distancing, and bars indoor singing and chanting, to reduce the risk of COVID transmission. In addition, the State has put limits on how many people can assemble in one indoor space—whether a church, theater, or lecture hall. Depending on COVID case and test-positivity rates, public gatherings may occur only at specifed occupancy levels—for example, at 50% or 25% of a facility's capacity. And when COVID rates are highest, all those capacity limits give way to a rule that the gathering—again, whether religious or secular—take place outdoors (with no limits on attendance). Given California's mild climate, that restriction—the one the Court today lifts for houses of worship alone—does not amount to a ban on the activity. Worship services, along with other gatherings, have taken place outdoors throughout this winter.

California's scheme homes in on these indoor gatherings because they pose a heightened danger of COVID transmission. In written testimony in this case, Dr. James Watt, the Chief of Communicable Diseases at the California Department of Public Health, explained: "There is broad consensus among epidemiologists that transmission (and thus spread) of the novel coronavirus is more likely" at "[i]ndoor public gatherings," which "bring together [many] people from different households." Decl. of Dr. James Watt in No. 3:20–cv–865 (SD Cal.), Doc. 81–3, ¶¶37, 44 (Watt Decl.). Dr. George Rutherford, a professor of epidemiology at the University of California, San Francisco School of Medicine, further elaborated on the point. He described the "increase[ ]" in risk when gatherings "are of an extended duration, and when there is a lot of verbal interaction, especially when there is group singing, chanting, or other loud vocalization" like speeches or sermons. Decl. of Dr. George Rutherford in No. 3:20–cv–865, Doc. 81–4, ¶91 (Rutherford Decl.). That risk, of course, extends not only to the participants themselves, but to everyone they associate with in a community. See Watt Decl., ¶42.

The medical experts also testifed about why California imposed more severe capacity limits on gathering places like churches and theaters than on other indoor sites. The State's regulation of retail stores is less stringent, Dr. Rutherford explained, because shopping "involves less close proximity" with other people—and for less time—than does an indoor worship service, lecture, or

similar event. Rutherford Decl., ¶113; see *id.*, ¶117. For that reason, shoppers are "less likely to receive a suffcient viral load of droplets" to contract COVID. *Id.*, ¶113. Similarly, Dr. Rutherford observed, workplaces can have higher capacity limits because employers (and, by extension, their employees) must comply with "detailed, workplace-specifc COVID prevention plans subject to enforcement by State labor authorities." *Id.*, ¶121. Film production studios in California, for example, must test their employees as many as three times a week—a requirement that "could not feasibly be applied to the congregation of a house of worship." *Ibid.*, and n. 8.

Given all that evidence, California's choices make good sense. The State is desperately trying to slow the spread of a deadly disease. It has concluded, based on essentially undisputed epidemiological f ndings, that congregating together indoors poses a special threat of contagion. So it has devised regulations to curb attendance at those assemblies and—in the worst times—to force them outdoors. Crucially, California has applied each of those rules equivalently to religious activities and to secular activities, including some with First Amendment protection of their own. Where the State has regulated religious conduct, it has as well regulated "nonreligious conduct that endangers [its] interests in a similar" way. *Lukumi*, 508 U. S., at 543. The only secular conduct the State treats better is the kind that its experts have found does not so imperil its interests—the kind that poses less risk of COVID transmission. Nothing in that policy violates the First Amendment.

Yet the Court will not let California fght COVID as it thinks appropriate. The Court has decided that the State must exempt worship services from the strictest aspect of its regulation of public gatherings. No one can know, from the Court's 19-line order, exactly why: Is it that the Court does not believe the science, or does it think even the best science must give way? In any event, the result is clear: The State may not treat worship services like activities found to pose a comparable COVID risk, such as political meetings or lectures. Instead, the State must treat this one communal gathering like activities thought to pose a much lesser COVID risk, such as running in and out of a hardware store. In thus ordering the State to change its public health policy, the Court forgets what a neutrality rule demands.

The Court insists on treating unlike cases, not like ones, equivalently.[2]

This is no garden-variety legal error: In forcing California to ignore its experts' scientifc f ndings, the Court impairs the State's effort to address a public health emergency. There are good reasons why the Constitution "principally entrusts the safety and the health of the people" to state offcia ls, not federal courts. *South Bay*, 590 U. S., at 967 (ROBERTS, C. J., concurring) (internal quotation marks and alteration omitted). First among them is that judges "lack[ ] the background, competence, and expertise to assess public health." *Ibid.* To state the obvious, judges do not know what scientists and public health experts do. I am sure that, in deciding this case, every Justice carefully examined the briefs and read the decisions below. But I cannot imagine that any of us delved into the scientifc research on how COVID spreads, or studied the strategies for containing it. So it is alarming that the Court second-guesses the judgments of expert offcia ls, and displaces their conclusions with its own. See *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 592 U. S. 14, 40 (2020) (SOTOMAYOR, J., dissenting). In the worst public health crisis in a century, this foray into armchair epidemiology cannot end well.

And who knows what today's decision will mean for other restrictions challenged in other cases? The Court's order exempts churches only from California's indoor ban, leaving its capacity restrictions in place (at least for now). That is all to the good: The injunction stops short of giving the churches all their requested relief. But the scope of the order raises questions.

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[2] For much this reason, the Court's decision in *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 592 U. S. 14 (2020) (*per curiam*), does not require today's injunction. There, the Court found that New York had "single[d] out houses of worship for especially harsh treatment." *Id.*, at 17. But here, according to the epidemiological evidence in the record, California has treated houses of worship identically to other facilities with the same risk. It is the Court, not the State, that "single[s] out" religious activity—separating it from other equally risky public gatherings. What is more, *Roman Catholic Diocese* held, at a time when New York was lifting restrictions to refec t declining case rates, that the policy at issue was "far more severe than has been shown to be required to prevent the spread of the virus." *Id.*, at 18. No court—or, at any rate, no court with any sense of modesty—can make that claim here. California's hospitals are near maximum capacity, and over 3,500 state residents perished from the virus just last week.

When are such capacity limits permissible, and when are they not? And is an indoor ban never allowed, or just not in this case? Most important—do the answers to those questions or similar ones turn on record evidence about epidemiology, or on naked judicial instinct? The Court's decision leaves state policymakers adrift, in California and elsewhere. It is diffcu lt enough in a predictable legal environment to craft COVID policies that keep communities safe. That task becomes harder still when offcia ls must guess which restrictions this Court will choose to strike down. The Court injects uncertainty into an area where uncertainty has human costs.

All this from unelected actors, "not accountable to the people." *South Bay*, 590 U. S., at 967 (ROBERTS, C. J., concurring). I fervently hope that the Court's intervention will not worsen the Nation's COVID crisis. But if this decision causes suffering, we will not pay. Our marble halls are now closed to the public, and our life tenure forever insulates us from responsibility for our errors. That would seem good reason to avoid disrupting a State's pandemic response. But the Court forges ahead regardless, insisting that science-based policy yield to judicial edict. I respectfully dissent.

No. 20A137. HARVEST ROCK CHURCH, INC., ET AL. *v.* NEWSOM, GOVERNOR OF CALIFORNIA. Application for injunctive relief, presented to JUSTICE KAGAN, and by her referred to the Court, granted in part. Respondent is enjoined from enforcing the Blueprint's Tier 1 prohibition on indoor worship services against applicants pending disposition of the appeal in the United States Court of Appeals for the Ninth Circuit and disposition of the petition for writ of certiorari, if such writ is timely sought. The application is denied with respect to the percentage capacity limitations, and respondent is not enjoined from imposing a 25% capacity limitation on indoor worship services in Tier 1. The application is denied with respect to the prohibition on singing and chanting during indoor services. This order is without prejudice to applicants presenting new evidence to the District Court that the State is not applying the percentage capacity limitations or the prohibition on singing and chanting in a generally applicable manner. Should the petition for writ of certiorari be denied, this order shall terminate automatically. In the event the petition for writ of certiorari is granted, the order shall terminate upon the sending down of the judgment of this Court.

JUSTICE THOMAS and JUSTICE GORSUCH would grant the application in full. See *South Bay United Pentecostal Church* v. *Newsom*, 592 U. S. 1243, 1245 (2021) (statement of GORSUCH, J.). JUSTICE ALITO would grant the application with respect to all of the capacity restrictions on indoor worship services and the prohibition against indoor singing and chanting, and would stay for 30 days an injunction against the percentage attendance caps and the prohibition against indoor singing and chanting. JUSTICE ALITO would have the stay lift in 30 days unless the State demonstrates clearly that nothing short of those measures will reduce the community spread of COVID–19 at indoor religious gatherings to the same extent as do the restrictions the State enforces with respect to other activities it classifes as essential.

JUSTICE KAGAN, with whom JUSTICE BREYER and JUSTICE SOTOMAYOR join, dissenting.

I dissent for the reasons set out in *South Bay United Pentecostal Church* v. *Newsom*, 592 U. S. 1243, 1250 (2021) (KAGAN, J., dissenting from partial grant of application for injunctive relief).

FEBRUARY 8, 2021

Miscellaneous Order

No. 20A120. GISH ET AL. *v.* NEWSOM, GOVERNOR OF CALIFORNIA, ET AL. Application for injunctive relief, presented to JUSTICE KAGAN, and by her referred to the Court, is treated as a petition for writ of certiorari before judgment, and the petition is granted. The December 11, 2020, order of the United States District Court for the Central District of California is vacated, and the case is remanded to the United States Court of Appeals for the Ninth Circuit with instructions to remand to the District Court for further consideration in light of *South Bay United Pentecostal Church* v. *Newsom*, 592 U. S. 1243 (2021).

FEBRUARY 11, 2021

Dismissal Under Rule 46

No. 20–816. IN RE PEARSON ET AL. Petition for writ of mandamus dismissed under this Court's Rule 46.

Miscellaneous Orders

No. 20A128. DUNN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS *v.* SMITH. C. A. 11th Cir. Application to va-

cate the injunction, presented to JUSTICE THOMAS, and by him referred to the Court, denied. JUSTICE THOMAS would grant the application.

JUSTICE KAGAN, with whom JUSTICE BREYER, JUSTICE SOTOMAYOR, and JUSTICE BARRETT join, concurring.

Willie Smith is sentenced to death, and his last wish is to have his pastor with him as he dies. The Court of Appeals for the Eleventh Circuit, applying a statute designed to protect prisoners' religious rights, required Alabama to honor that request. I concur in the Court's decision to leave that order in place, and I write to explain why. Alabama has not carried its burden of showing that the exclusion of all clergy members from the execution chamber is necessary to ensure prison security. So the State cannot now execute Smith without his pastor present, to ease what Smith calls the "transition between the worlds of the living and the dead." Complaint in No. 2:20–cv–1026, Doc. 1, ¶65 (MD Ala.) (Complaint).

The governing law sets a high bar for Alabama to clear. The Religious Land Use and Institutionalized Persons Act (RLUIPA) provides "expansive protection" for prisoners' religious liberty. *Holt* v. *Hobbs*, 574 U. S. 352, 358 (2015). Under that statute, a prison may not "impose a substantial burden" on a prisoner's "religious exercise" unless doing so satisfes our strict-scrutiny test: The challenged policy must be "the least restrictive means of furthering [a] compelling governmental interest." 42 U. S. C. § 2000cc–1(a). That standard, we have often explained, is "exceptionally demanding." *Holt*, 574 U. S., at 364. If any "less restrictive means is available for the Government to achieve its goals, then the Government must use it." *Id.*, at 365.

Alabama's policy substantially burdens Smith's exercise of religion. The State bars all clergy members from the execution chamber, leaving inmates to die without spiritual attendance. But Smith understands his minister's presence as "integral to [his] faith" and "essential to [his] spiritual search for redemption." Complaint ¶64; Decl. of Spencer Hahn in No. 2:20–cv–1026, Doc. 4–1, ¶14. His pastor, Smith says, will not only "relieve his struggle as he passes," but also help him "properly express to God his repentance." Complaint ¶¶65–66. The sincerity of those religious beliefs is not in doubt: Alabama acknowledges that

Smith's request is "based on a religious belief and not some other motivantion." Brief for Defendant-Appellee in No. 21–10348 (CA11), p. 24. So Alabama's policy must withstand strict scrutiny.

And it cannot. Prison security is, of course, a compelling state interest. But past practice, in Alabama and elsewhere, shows that a prison may ensure security without barring all clergy members from the execution chamber. Until two years ago, Alabama required the presence of a prison chaplain at an inmate's side. (It gave up the practice only when this Court barred States from providing spiritual advisors of just one faith.) Still more relevant, other jurisdictions have allowed clergy members with no connection to the government to attend an inmate's execution. In the last year, the Federal Government has conducted more than 10 executions attended by the prisoner's clergy of choice—exactly what Smith requests. And some States have chosen to follow the same practice. See also *post*, at 1258 (KAVANAUGH, J., dissenting from denial of application to vacate injunction). Nowhere, as far as I can tell, has the presence of a clergy member (whether state-appointed or independent) disturbed an execution. That record "suggests that [Alabama] could satisfy its security concerns through a means less restrictive" than its current prohibition. *Holt*, 574 U. S., at 368–369.

The State's arguments to the contrary are unpersuasive. Alabama mainly asserts the need to close the execution chamber to all but those whom the warden has found "trustworthy." Application 30. But that does not justify the State's categorical bar. Alabama can take any number of measures to ensure that a clergy member will act responsibly during an execution. The State can do a background check on the minister; it can interview him and his associates; it can seek a penalty-backed pledge that he will obey all rules. See *Dunn* v. *Ray*, 586 U. S. 1138 (2019) (KAGAN, J., dissenting). What the State cannot do, consistent with strict scrutiny, is simply presume that every clergy member will be untrustworthy—or otherwise said, that only the harshest restriction can work. See *Holt*, 574 U. S., at 369. Relatedly, Alabama identifes "disturbances [that] have arisen around executions in the past." Application 22. But its two examples concern close family members of inmates. The State cannot jump from those (dissimilar) incidents to a conclusion that even well-vetted clergy

members risk disrupting an execution. Again, the State fails to recognize that RLUIPA places a heightened duty on prison officials: to demonstrate, not just "assume[,] that a plausible, less restrictive alternative would be ineffective" when their preferred approach burdens religion. *Holt*, 574 U. S., at 369.

For these reasons, the Eleventh Circuit was right to bar Alabama from executing Smith without his pastor by his side. The law guarantees Smith the right to practice his faith free from unnecessary interference, including at the moment the State puts him to death.

JUSTICE KAVANAUGH, with whom THE CHIEF JUSTICE joins, dissenting.

In 1991, Willie Smith murdered Sharma Ruth Johnson. Smith's execution was scheduled for tonight. Smith asked to have his spiritual advisor in the execution room. Alabama said no under its policy of excluding all spiritual advisors from the execution room, as distinct from the viewing room. The Eleventh Circuit enjoined the execution, stating that the State's policy likely violates the Religious Land Use and Institutionalized Persons Act. Because the State's policy is non-discriminatory and, in my view, serves the State's compelling interests in ensuring the safety, security, and solemnity of the execution room, I would have granted the State's application to vacate the injunction. See *Murphy* v. *Collier*, 587 U. S. 901, 913 (2019) (statement of KAVANAUGH, J., joined by ROBERTS, C. J., respecting grant of application of stay). But the Court has a different view and denies the State's application. Given the stays of execution here and in *Gutierrez* v. *Saenz*, 590 U. S. 1016 (2020), it seems apparent that States that want to avoid months or years of litigation delays because of this RLUIPA issue should figure out a way to allow spiritual advisors into the execution room, as other States and the Federal Government have done. Doing so not only would satisfy inmates' requests, but also would avoid still further delays and bring long overdue closure for victims' families.

No. 20A129. DUNN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. *v.* SMITH. Application to vacate stay of execution entered by the United States Court of Appeals for the Eleventh Circuit on February 10, 2021, presented to JUSTICE THOMAS, and by him referred to the Court, granted.

FEBRUARY 22, 2021

Certiorari Granted—Vacated and Remanded

No. 20–31. MCCOY *v.* ALAMU. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Taylor* v. *Riojas*, 592 U. S. 7 (2020). Reported below: 950 F. 3d 226.

No. 20–683. WILKE, INTERIM STATE HEALTH OFFICER OF NORTH DAKOTA, ET AL. *v.* PHARMACEUTICAL CARE MANAGEMENT ASSN. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Rutledge* v. *Pharmaceutical Care Management Assn.*, 592 U. S. 80 (2020). Reported below: 968 F. 3d 901.

Certiorari Dismissed

No. 20–6506. BUXTON *v.* DOUGHERTY ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 821 Fed. Appx. 70.

No. 20–6578. WHITE *v.* LUMPKIN, PRESIDING JUDGE, OKLAHOMA COURT OF CRIMINAL APPEALS, ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). Reported below: 829 Fed. Appx. 886.

No. 20–6642. DUNIGAN *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 20–6651. SEPEHRY-FARD *v.* COURT OF APPEAL OF CALIFORNIA, SIXTH APPELLATE DISTRICT, ET AL. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 20A63. TRUMP *v.* VANCE, DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK, ET AL. S. D. N. Y. Application for stay, presented to JUSTICE BREYER and referred to the Court, denied.

No. 20M50. SEIDMAN *v.* WEILER ET AL.;

No. 20M52. MARTINEZ *v.* UNITED STATES;

No. 20M53. MARKOVIC *v.* RAHAMAN; and MARKOVIC *v.* FISHMAN;

No. 20M55. MITCHELL, INDIVIDUALLY AND ON BEHALF OF HIS CHILDREN X. M. ET AL., ET AL. *v.* DAKOTA COUNTY SOCIAL SERVICES ET AL.; and

No. 20M58. YAZDCHI *v.* WELLS FARGO BANK, N. A. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 20M51. THOMAS *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 20M54. POLITES *v.* CITY OF PHILADELPHIA LAW DEPARTMENT. Motion for leave to proceed as a veteran denied.

No. 20M56. ROBINSON *v.* KANDULSKI ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 20M57. DOE CO. *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted. JUSTICE BREYER took no part in the consideration or decision of this motion.

No. 20–437. UNITED STATES *v.* PALOMAR-SANTIAGO. C. A. 9th Cir. [Certiorari granted, 592 U. S. 1163.] Motion of respondent for appointment of counsel granted, and Bradley N. Garcia, Esq., of Washington, D. C., is appointed to serve as counsel for respondent in this case. Motion of petitioner to dispense with printing joint appendix granted.

No. 20–444. UNITED STATES *v.* GARY. C. A. 4th Cir. [Certiorari granted, 592 U. S. 1163.] Motion of respondent for appointment of counsel granted, and Jeffrey L. Fisher, Esq., of Stanford, Cal., is appointed to serve as counsel for respondent.

No. 20–493. YSLETA DEL SUR PUEBLO ET AL. *v.* TEXAS. C. A. 5th Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 20–5904. TERRY *v.* UNITED STATES. C. A. 11th Cir. [Certiorari granted, 592 U. S. 1163.] Motion of petitioner to dispense with printing joint appendix granted.

No. 20–5974. SANDERS *v.* FOSTER, WARDEN. C. A 7th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [592 U. S. 1148] denied. JUSTICE BARRETT took no part in the consideration or decision of this motion.

No. 20–6507. BERRY ET UX. *v.* WELLS FARGO BANK, N. A., ET AL. C. A. 5th Cir.;

No. 20–6602. BOUCHER *v.* LYONS. Sup. Ct. N. H.;

No. 20–6604. GRANT *v.* CITY OF ROANOKE, VIRGINIA. C. A. 4th Cir.;

No. 20–6735. MCCLUNG ET UX. *v.* ESTEVEZ. Cir. Ct. Miami-Dade County, Fla.; and

No. 20–6899. HUDSON *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 15, 2021, within which to pay the docketing fees required by this Court's Rule 38(a).

No. 20–6897. IN RE BRADFORD;

No. 20–6952. IN RE PELLETIER; and

No. 20–6994. IN RE SMITH. Petitions for writs of habeas corpus denied.

No. 20–777. IN RE HEYMAN;

No. 20–798. IN RE PATTI;

No. 20–5876. IN RE KELLER;

No. 20–6617. IN RE ROMAIN; and

No. 20–6750. IN RE MARVIN. Petitions for writs of mandamus denied.

No. 20–6603. IN RE AKEL. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8. JUSTICE KAGAN

took no part in the consideration or decision of this motion and this petition.

Certiorari Granted

No. 20–449. Department of Homeland Security et al. *v.* New York et al. C. A. 2d Cir. Certiorari granted. Reported below: 969 F. 3d 42.

No. 20–429. American Medical Assn. et al. *v.* Cochran, Acting Secretary of Health and Human Services, et al.;

No. 20–454. Cochran, Acting Secretary of Health and Human Services, et al. *v.* Mayor and City Council of Baltimore; and

No. 20–539. Oregon et al. *v.* Cochran, Acting Secretary of Health and Human Services, et al. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour is allotted for oral argument. Reported below: Nos. 20–429 and 20–539, 950 F. 3d 1067; No. 20–454, 973 F. 3d 258.

No. 20–5279. Wooden *v.* United States. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 2 presented by the petition. Reported below: 945 F. 3d 498.

Certiorari Denied

No. 20–48. Johnson *v.* Arkansas. Sup. Ct. Ark. Certiorari denied. Reported below: 2019 Ark. 391, 591 S. W. 3d 265.

No. 20–120. Juarez *v.* Colorado. Sup. Ct. Colo. Certiorari denied. Reported below: 457 P. 3d 560.

No. 20–186. Villegas Rendon *v.* Wilkinson, Acting Attorney General. C. A. 8th Cir. Certiorari denied.

No. 20–261. Schulz et al. *v.* Presbytery of Seattle et al. Ct. App. Wash. Certiorari denied. Reported below: 10 Wash. App. 2d 696, 449 P. 3d 1077.

No. 20–294. Gaines *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 709.

No. 20–321. Barnette *v.* HBI, L. L. C., et al. Sup. Ct. Neb. Certiorari denied. Reported below: 305 Neb. 457, 941 N. W. 2d 158.

No. 20–371. CARE ALTERNATIVES *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 952 F. 3d 89.

No. 20–401. PIERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 20–475. CAMPBELL *v.* EAGLE FORCE HOLDINGS, LLC, ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 235 A. 3d 727.

No. 20–478. CBX RESOURCES, L. L. C. *v.* ACE AMERICAN INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 959 F. 3d 175.

No. 20–499. HULL *v.* ROCKWELL. C. A. 1st Cir. Certiorari denied. Reported below: 968 F. 3d 12.

No. 20–534. ALL SAINTS' EPISCOPAL CHURCH (FORT WORTH) *v.* EPISCOPAL DIOCESE OF FORT WORTH ET AL.; and

No. 20–536. EPISCOPAL CHURCH ET AL. *v.* EPISCOPAL DIOCESE OF FORT WORTH ET AL. Sup. Ct. Tex. Certiorari denied. Reported below: 602 S. W. 3d 417.

No. 20–549. FARROW ET AL. *v.* CONTRA COSTA COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 520.

No. 20–564. CARLISLE *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 601 S. W. 3d 168.

No. 20–595. LEMMA, SHERIFF, SEMINOLE COUNTY, FLORIDA *v.* BARNETT. C. A. 11th Cir. Certiorari denied. Reported below: 956 F. 3d 1291.

No. 20–599. SINGH *v.* MURPHY, GOVERNOR OF NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 244 N. J. 329, 240 A. 3d 384.

No. 20–602. CLIFFORD, AKA DANIELS *v.* TRUMP. C. A. 9th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 746.

No. 20–612. DE LA FUENTE ET AL. *v.* SIMON, MINNESOTA SECRETARY OF STATE. Sup. Ct. Minn. Certiorari denied.

No. 20–622. AMAZON.COM, INC., ET AL. *v.* RITTMANN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 971 F. 3d 904.

No. 20–658. COHEN *v.* EQUIFAX INFORMATION SERVICES, LLC, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 827 Fed. Appx. 14.

No. 20–660. EMPLOYER SOLUTIONS STAFFING GROUP, LLC, ET AL. *v.* SCALIA, SECRETARY OF LABOR. C. A. 9th Cir. Certiorari denied. Reported below: 951 F. 3d 1097.

No. 20–719. WEBSTER *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA. C. A. 9th Cir. Certiorari denied.

No. 20–724. MIDDLETON ET AL. *v.* COMPLETE NUTRITION FRANCHISING, LLC, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 482.

No. 20–725. RAMON OCHOA *v.* LEVINE. Sup. Ct. Pa. Certiorari denied. Reported below: 660 Pa. 234, 234 A. 3d 402.

No. 20–728. ADIDAS AG *v.* NIKE, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 963 F. 3d 1355.

No. 20–734. LLOYD *v.* GERHARD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 302.

No. 20–749. ROUX *v.* PHARRIS ET AL. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 20–752. DAVIS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 20–755. BIBEROVIC *v.* CITY OF CULVER CITY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 531.

No. 20–756. BAYLOR *v.* ETO, FKA BAYLOR. Ct. App. Minn. Certiorari denied.

No. 20–758. REYNOLDS *v.* U. S. BANK N. A. Ct. App. Ariz. Certiorari denied.

No. 20–759. BING *v.* BRIVO SYSTEMS, LLC. C. A. 4th Cir. Certiorari denied. Reported below: 959 F. 3d 605.

No. 20–766. ARCHER *v.* WINN DIXIE STORES, INC., ET AL. Sup. Ct. Fla. Certiorari denied.

No. 20–769. GS CLEANTECH CORP. ET AL. *v.* ADKINS ENERGY LLC ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 951 F. 3d 1310.

No. 20–770. NYPL *v.* JPMORGAN CHASE & CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 135.

No. 20–771. DEBERA P. *v.* MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES. Sup. Jud. Ct. Me. Certiorari denied.

No. 20–775. WILLIAMS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2019–00490 (La. 4/3/20), 340 So. 3d 761.

No. 20–781. UNITED STATES EX REL. CONCILIO DE SALUD INTEGRAL DE LOIZA, INC., ET AL. *v.* J. C. REMODELING, INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 962 F. 3d 34.

No. 20–785. BALDWIN *v.* DORSEY. C. A. 5th Cir. Certiorari denied. Reported below: 964 F. 3d 320.

No. 20–787. PRESERVE RESPONSIBLE SHORELINE MANAGEMENT ET AL. *v.* CITY OF BAINBRIDGE ISLAND, WASHINGTON, ET AL. Ct. App. Wash. Certiorari denied. Reported below: 11 Wash. App. 2d 1040.

No. 20–789. DIKES, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DIKES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 472.

No. 20–792. PEARSON *v.* CITY OF AUGUSTA, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 940.

No. 20–797. PATTI *v.* PECK. C. A. 3d Cir. Certiorari denied. Reported below: 782 Fed. Appx. 168.

No. 20–799. WOOD *v.* RAFFENSPERGER, GEORGIA SECRETARY OF STATE, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 981 F. 3d 1307.

No. 20–801. DELUCIA *v.* GREENBUILD, LLC, ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 182 App. Div. 3d 874, 122 N. Y. S. 3d 181.

No. 20–802. KURSCHINSKE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 224 A. 3d 810.

No. 20–803. LANGAN *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 812 Fed. Appx. 982.

No. 20–805. ROLLINSNELSON LTC CORP. ET AL. *v.* UNITED STATES EX REL. WINTERS. C. A. 9th Cir. Certiorari denied. Reported below: 953 F. 3d 1108.

No. 20–806. SWARTZLANDER *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 811 Fed. Appx. 616.

No. 20–809. WARD *v.* JACKSON ET AL. Sup. Ct. Ariz. Certiorari denied.

No. 20–811. CONTRERAS, ON BEHALF OF HER MINOR CHILD A. L. *v.* DONA ANA COUNTY BOARD OF COUNTY COMMISSIONERS, DBA DONA ANA COUNTY DETENTION CENTER, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 965 F. 3d 1114.

No. 20–813. SIMMONS *v.* UBS FINANCIAL SERVICES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 972 F. 3d 664.

No. 20–814. NALDER ET AL. *v.* UNITED AUTOMOBILE INSURANCE CO. C. A. 9th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 347.

No. 20–817. OGDEN *v.* TICE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied.

No. 20–818. NORVELL *v.* YELLEN, SECRETARY OF THE TREASURY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 853.

No. 20–820. JACKSON *v.* WELLS FARGO HOME MORTGAGE. C. A. 2d Cir. Certiorari denied. Reported below: 811 Fed. Appx. 27.

No. 20–821. MOUNTAINLANDS CONSERVANCY, LLC, ET AL. *v.* CALIFORNIA COASTAL COMMISSION ET AL. Ct. App. Cal., 2d App. Dist., Div. 8. Certiorari denied. Reported below: 47 Cal. App. 5th 214, 260 Cal. Rptr. 3d 683.

No. 20–822. PHILLIPS *v.* MARYLAND BOARD OF LAW EXAMINERS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 165.

No. 20–823. CRIDER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 607 S. W. 3d 305.

No. 20–824. TAUPIER *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 197 Conn. App. 784, 234 A. 3d 29.

No. 20–825. BREWER *v.* HOOKS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 923.

No. 20–829. WASTECARE CORP. *v.* HARMONY ENTERPRISES, INC. C. A. 11th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 892.

No. 20–833. COONTZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 201.

No. 20–834. WIDTFELDT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 824 Fed. Appx. 444.

No. 20–835. ROSENFELD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 20–838. BLANDINO *v.* NEVADA ET AL. Ct. App. Nev. Certiorari denied. Reported below: 136 Nev. 785, 472 P. 3d 702.

No. 20–841. MARTINEZ LOPEZ *v.* WILKINSON, ACTING ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 815.

No. 20–847. POWERS *v.* BANK OF NEW YORK MELLON, FKA BANK OF NEW YORK, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 730.

No. 20–852. GRAY, CO-ADMINISTRATRIX OF THE ESTATE OF MILLER, ET AL. *v.* ALABAMA GREAT SOUTHERN RAILROAD CO. C. A. 5th Cir. Certiorari denied. Reported below: 960 F. 3d 212.

No. 20–862. HUI FENG ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 935 F. 3d 721.

No. 20–863. AKEVA L. L. C. *v.* NIKE, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 817 Fed. Appx. 1005.

No. 20–867. AHMED *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 20–868. FOXFIELD VILLA ASSOCIATES, LLC, ET AL. *v.* ROBBEN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 967 F. 3d 1082.

No. 20–870. OREM ET UX. *v.* GILLMORE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 90.

No. 20–876. LIBERTI ET AL. *v.* CITY OF SCOTTSDALE, ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 89.

No. 20–878. EDWARDS *v.* INDIANA UNIVERSITY. C. A. 7th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 441.

No. 20–882. TRUMP ET AL. *v.* BIDEN ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 2020 WI 91, 394 Wis. 2d 629, 951 N. W. 2d 568.

No. 20–890. STANFORD VINA RANCH IRRIGATION CO. *v.* CALIFORNIA ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 50 Cal. App. 5th 976, 264 Cal. Rptr. 3d 509.

No. 20–893. BELANUS *v.* GUYER, WARDEN. Sup. Ct. Mont. Certiorari denied.

No. 20–897. KOPITKE *v.* BELL, EXECUTIVE DIRECTOR, NORTH CAROLINA STATE BOARD OF ELECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 964 F. 3d 252.

No. 20–898. SHERROD *v.* UNITED WAY WORLDWIDE. C. A. 5th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 311.

No. 20–899. SORUM ET AL. *v.* NORTH DAKOTA ET AL. Sup. Ct. N. D. Certiorari denied. Reported below: 2020 ND 175, 947 N. W. 2d 382.

No. 20–901. SPRING BRANCH INDEPENDENT SCHOOL DISTRICT *v.* O. W., BY NEXT FRIEND HANNAH W. C. A. 5th Cir. Certiorari denied. Reported below: 961 F. 3d 781.

No. 20–903. FIRST CHOICE CHIROPRACTIC, LLC, ET AL. *v.* DEWINE, GOVERNOR OF OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 969 F. 3d 675.

No. 20–906. HORNE ET AL. *v.* POLK. C. A. 9th Cir. Certiorari denied. Reported below: 810 Fed. Appx. 591.

No. 20–912. LADD ET AL. *v.* MARCHBANKS. C. A. 6th Cir. Certiorari denied. Reported below: 971 F. 3d 574.

No. 20–917. 800 SERVICES, INC. *v.* AT&T CORP. C. A. 3d Cir. Certiorari denied. Reported below: 822 Fed. Appx. 98.

No. 20–921. CASTILLO *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 20–924. Bowser *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 964 F. 3d 26.

No. 20–926. Belanus *v.* Montana. Sup. Ct. Mont. Certiorari denied.

No. 20–930. Geppert *v.* Maryland Motor Vehicle Administration. Ct. App. Md. Certiorari denied. Reported below: 470 Md. 28, 233 A. 3d 102.

No. 20–934. Samaranayake et al. *v.* Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office. C. A. Fed. Cir. Certiorari denied. Reported below: 819 Fed. Appx. 925.

No. 20–946. Dierlam *v.* Biden, President of the United States, et al. C. A. 5th Cir. Certiorari denied. Reported below: 977 F. 3d 471.

No. 20–947. Idaho State Tax Commission *v.* Noell Industries, Inc. Sup. Ct. Idaho. Certiorari denied. Reported below: 167 Idaho 367, 470 P. 3d 1176.

No. 20–957. Vazirabadi *v.* Denver Public Schools et al. C. A. 10th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 805.

No. 20–958. Scott *v.* Arnold, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 962 F. 3d 1128.

No. 20–961. Ryskamp *v.* Commissioner of Internal Revenue. C. A. 9th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 207.

No. 20–964. Tulp *v.* Educational Commission for Foreign Medical Graduates et al. C. A. 3d Cir. Certiorari denied. Reported below: 824 Fed. Appx. 134.

No. 20–967. Rodriguez-Garcia *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 283.

No. 20–970. Gonzalez *v.* Wilkinson, Acting Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 476.

No. 20–978. Metaxas *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 20–981. AGBAPURUONWU *v.* NBC SUBSIDIARY (WRC–TV), LLC, DBA NBC4 WASHINGTON, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 234.

No. 20–986. HUBBARD *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied.

No. 20–1003. CHRISTY, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 971 F. 3d 1332.

No. 20–1028. BLIXSETH *v.* CREDIT SUISSE. C. A. 9th Cir. Certiorari denied. Reported below: 961 F. 3d 1074.

No. 20–1032. PETROBRAS AMERICA INC. ET AL. *v.* VANTAGE DEEPWATER CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 966 F. 3d 361.

No. 20–1045. LIEBENGUTH *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 336 Conn. 685, 250 A. 3d 1.

No. 20–5085. JOHNSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 8 Cal. 5th 475, 453 P. 3d 38.

No. 20–5304. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 20–5589. ROSS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 964 F. 3d 1034.

No. 20–5598. RICHARDSON *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 2020 CO 46.

No. 20–5610. BROWN *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 19–370 (La. App. 5 Cir. 1/15/20), 289 So. 3d 1179.

No. 20–5672. TURPIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 800 Fed. Appx. 194.

No. 20–5718. TRICE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 966 F. 3d 506.

No. 20–5764. BERRYMAN *v.* WONG, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 20–5774. MANZANARES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 956 F. 3d 1220.

No. 20–5776. AUGARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 954 F. 3d 1090.

No. 20–5993. JAMES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 950 F. 3d 289.

No. 20–6038. WHITAKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 804 Fed. Appx. 209.

No. 20–6043. ARCHER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 293 So. 3d 455.

No. 20–6046. MCGINNIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 956 F. 3d 747.

No. 20–6093. ABUTALEB *v.* ABUTALEB. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2020 IL App (3d) 190572–U.

No. 20–6161. BRUNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 968 F. 3d 325.

No. 20–6218. VALENTINE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 296 So. 3d 375.

No. 20–6272. USHER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 202.

No. 20–6283. BROWNLEE *v.* CAPOZZA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE. C. A. 3d Cir. Certiorari denied. Reported below: 823 Fed. Appx. 73.

No. 20–6310. CARTER *v.* BROOMFIELD, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 946 F. 3d 489.

No. 20–6323. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 828 Fed. Appx. 891.

No. 20–6351. TIPPINS *v.* CARUSO ET AL. C. A. 6th Cir. Certiorari denied.

No. 20–6383. MCFADDEN *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 619 S. W. 3d 434.

No. 20–6429. HOWELL *v.* GORDON, ARATA, MCCOLLAM, DUPLANTIS & EAGAN, L. L. C., ET AL. C. A. 5th Cir. Certiorari denied.

No. 20–6430. HOWELL *v.* GORDON, ARATA, MCCOLLAM, DUPLANTIS & EAGAN, L. L. C., ET AL. C. A. 5th Cir. Certiorari denied.

No. 20–6431. HOWELL *v.* ADLER ET AL.; and
No. 20–6432. LAMARTINA *v.* ADLER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 271.

No. 20–6443. MYERS *v.* ROWELL ET AL. C. A. 2d Cir. Certiorari denied.

No. 20–6444. FUSTON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 2020 OK CR 4, 470 P. 3d 306.

No. 20–6477. ARDANEH *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 486 Mass. 1005, 155 N. E. 3d 717.

No. 20–6493. UPPAL *v.* NATIONSTAR MORTGAGE, LLC. Sup. Ct. Fla. Certiorari denied.

No. 20–6497. BRIDGES *v.* GRAY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–6499. SIGLER *v.* THORNTON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 124.

No. 20–6501. RILEY *v.* MEEHAN. Sup. Ct. S. C. Certiorari denied.

No. 20–6505. BIGBEE *v.* FITZ, WARDEN. Ct. Crim. App. Tenn. Certiorari denied.

No. 20–6512. LEWIS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied.

No. 20–6514. WEATHERHOLT *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 298 Va. 438, 839 S. E. 2d 492.

No. 20–6518. MILAM *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 20–6522. PENDLETON *v.* HAMRICK ET AL. Sup. Ct. App. W. Va. Certiorari denied.

No. 20–6524. MYERS *v.* GEORGIA. Ct. App. Ga. Certiorari denied.

No. 20–6525. ARANOFF *v.* ARANOFF. Ct. App. N. Y. Certiorari denied. Reported below: 35 N. Y. 3d 1077, 154 N. E. 3d 10.

No. 20–6528. WASHINGTON *v.* BROOKE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 402.

No. 20–6532. SANCHEZ *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 20–6534. SCOTT *v.* GRIFFIN ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 403.

No. 20–6537. ROUHI *v.* CVS PHARMACY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 879.

No. 20–6538. SCHMITT *v.* BAKER, GOVERNOR OF MASSACHUSETTS. C. A. 1st Cir. Certiorari denied.

No. 20–6542. PEW *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 660 Pa. 309, 234 A. 3d 444.

No. 20–6544. OVERTON *v.* MACAULEY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 341.

No. 20–6546. NIMMER *v.* HEAVICAN, CHIEF JUSTICE, SUPREME COURT OF NEBRASKA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 803 Fed. Appx. 61.

No. 20–6547. MCNEES *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 20–6549. MOSS *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 20–6550. NEWKIRK *v.* KISER, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied.

No. 20–6558. BAMBERG *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 308 Ga. 340, 839 S. E. 2d 640.

No. 20–6561. RODRIGUEZ *v.* MOODY, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 426.

No. 20–6564. SCOTT *v.* SINGLETON, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 20–6565. QUINN *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2019–00647 (La. 9/9/20), 340 So. 3d 829.

No. 20–6573. KEYES *v.* WILSON ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–6579. O'Neil *v.* Weld County, Colorado. C. A. 10th Cir. Certiorari denied.

No. 20–6592. Gomez *v.* Madden, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 807 Fed. Appx. 709.

No. 20–6593. MacLeod *v.* Moritz et al. C. A. 6th Cir. Certiorari denied.

No. 20–6595. Brockington *v.* Salem United Methodist Church et al. C. A. 4th Cir. Certiorari denied. Reported below: 797 Fed. Appx. 115.

No. 20–6598. Baker *v.* Capozza, Superintendent, State Correctional Institution at Fayette, et al. C. A. 3d Cir. Certiorari denied.

No. 20–6605. Mayo *v.* Russell et al. C. A. 9th Cir. Certiorari denied. Reported below: 799 Fed. Appx. 531.

No. 20–6607. Miles, aka Miles-El *v.* Ionia Correctional Facility et al. C. A. 6th Cir. Certiorari denied.

No. 20–6608. Patten *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 20–6611. Mullaney *v.* University of St. Thomas. Ct. App. Minn. Certiorari denied.

No. 20–6612. Patterson *v.* Saul, Commissioner of Social Security. C. A. 4th Cir. Certiorari denied. Reported below: 805 Fed. Appx. 208.

No. 20–6614. Jarvis *v.* Leggett et al. Ct. Sp. App. Md. Certiorari denied.

No. 20–6615. McHenry *v.* Texas et al. C. A. 5th Cir. Certiorari denied. Reported below: 826 Fed. Appx. 352.

No. 20–6620. Spengler *v.* Los Angeles County District Attorney. C. A. 9th Cir. Certiorari denied.

No. 20–6621. Smith *v.* Benton, Warden. Sup. Ct. Ga. Certiorari denied.

No. 20–6623. Pin *v.* Clarke, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 922.

No. 20–6624. AGUILERA *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 20–6625. WHIPPLE *v.* JOHNSON ET AL. C. A. 11th Cir. Certiorari denied.

No. 20–6627. JENKINS *v.* SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT WORKFORCE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 814 Fed. Appx. 795.

No. 20–6629. DOE *v.* CARSON, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL. C. A. 6th Cir. Certiorari denied.

No. 20–6631. REDMOND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 965 F. 3d 416.

No. 20–6633. VARGAS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 9 Cal. 5th 793, 468 P. 3d 1121.

No. 20–6636. LAN TU TRINH *v.* CITIZEN BUSINESS BANKING ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 807 Fed. Appx. 196.

No. 20–6639. AURIT *v.* COLORADO. Sup. Ct. Colo. Certiorari denied.

No. 20–6643. MCCRAY *v.* LEWIS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 288.

No. 20–6644. SANTIAGO RENTERIA *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 814 Fed. Appx. 827.

No. 20–6645. CERVANTES *v.* SHINN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, REHABILITATION AND REENTRY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–6646. CROCE *v.* CROCE. Super. Ct. Pa. Certiorari denied. Reported below: 221 A. 3d 286.

No. 20–6649. EL MUJADDID *v.* BREWER ET AL. (Reported below: 808 Fed. Appx. 73); and EL MUJADDID *v.* NEW JERSEY (802 Fed. Appx. 674). C. A. 3d Cir. Certiorari denied.

No. 20–6650. SUMNER *v.* CARTER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 794 Fed. Appx. 309.

No. 20–6652. STEPHENSON *v.* KELLY, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 20–6653. ROEDER *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 57 Kan. App. 2d xlii, 444 P. 3d 379.

No. 20–6654. ROMERO *v.* MADDEN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 20–6658. BROWN *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 20–6659. ASHLEY *v.* CALIFORNIA ET AL. Ct. App. Cal., 2d App. Dist., Div. 1. Certiorari denied.

No. 20–6661. FIGGE *v.* FRAUENHEIM, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 570.

No. 20–6663. BROWNLEE *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 181 App. Div. 3d 1265, 120 N. Y. S. 3d 673.

No. 20–6667. DOUGLAS *v.* SCHMITT, ATTORNEY GENERAL OF MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied.

No. 20–6669. ZELLNER *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 353 Ga. App. 527, 838 S. E. 2d 613.

No. 20–6670. TAYLOR *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 817 Fed. Appx. 1021.

No. 20–6672. COLEMAN *v.* EPHRAIM MCDOWELL REGIONAL MEDICAL CENTER. Ct. App. Ky. Certiorari denied.

No. 20–6675. CAVITTE *v.* NEBRASKA. Ct. App. Neb. Certiorari denied. Reported below: 28 Neb. App. 601, 945 N. W. 2d 228.

No. 20–6676. DANIELS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 304 So. 3d 1218.

No. 20–6678. DAVIS *v.* PAYNE, DIRECTOR, ARKANSAS DIVISION OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 20–6680. TAYLOR *v.* BUCHANAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–6681. WRIGHT *v.* GEORGIA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 841.

No. 20–6682. VURIMINDI *v.* WELLS FARGO BANK, N. A. Super. Ct. Pa. Certiorari denied.

No. 20–6685. REDDITT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 965 F. 3d 654.

No. 20–6686. STEWART *v.* LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 20–6687. JONAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 824 Fed. Appx. 224.

No. 20–6689. KWONG *v.* CHESWOLD (TL), LLC, ET AL. App. Ct. Conn. Certiorari denied. Reported below: 196 Conn. App. 279, 229 A. 3d 1145.

No. 20–6691. ARMENTA LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 819 Fed. Appx. 821.

No. 20–6692. LOPEZ-CANALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 299.

No. 20–6694. FLORES-RIOJAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 166.

No. 20–6695. MASSEY *v.* MULTICARE HEALTH SYSTEM ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–6697. O'NEIL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 966 F. 3d 764.

No. 20–6698. MORRISON *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied.

No. 20–6699. PINEDA-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 17.

No. 20–6700. CALABRESE *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–6701. PEDRAZA *v.* OHIO. Ct. App. Ohio, 9th App. Dist., Medina County. Certiorari denied. Reported below: 2020-Ohio-2661.

No. 20–6702. MORENO-TURRUBIATES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 161.

No. 20–6703. DARDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 791 Fed. Appx. 434.

No. 20–6704. CALDERON *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 20–6706. DEGOLLADO *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 20–6707. PETERSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 824 Fed. Appx. 138.

No. 20–6708. DECLOUES *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 20–6709. HUNDLEY *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 162 Ohio St. 3d 509, 2020-Ohio-3775, 166 N. E. 3d 1066.

No. 20–6710. IRON CROW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 970 F. 3d 1003.

No. 20–6712. LEAKE *v.* SOCIAL SECURITY ADMINISTRATION. C. A. 4th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 789.

No. 20–6713. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 869.

No. 20–6715. MANKIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 162.

No. 20–6716. MARTIN *v.* SHINN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, REHABILITATION AND REENTRY. C. A. 9th Cir. Certiorari denied.

No. 20–6720. HARPER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 20–6721. BOOTH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 820 Fed. Appx. 590.

No. 20–6722. POINDEXTER *v.* PAYNE, DIRECTOR, ARKANSAS DIVISION OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 20–6723. DUCKSWORTH *v.* MACMURDO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 809 Fed. Appx. 249.

No. 20–6725. DURANT *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 430 S. C. 98, 844 S. E. 2d 49.

No. 20–6726. BETANCES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 20–6727. AVALOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 601.

No. 20–6728. ADAMS *v.* GEORGIA OFFICE OF THE GOVERNOR ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 887.

No. 20–6730. CORRALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 831 Fed. Appx. 147.

No. 20–6732. FORTY-FEBRES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 982 F. 3d 802.

No. 20–6733. FERGUSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 380.

No. 20–6734. MOBASSERI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 828 Fed. Appx. 278.

No. 20–6736. DIAZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 967 F. 3d 107.

No. 20–6737. ALEJANDRO PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–6738. COFFMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 969 F. 3d 186.

No. 20–6739. MILLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 20–6740. PEAK *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 230 A. 3d 1220.

No. 20–6741. MCDANIELS *v.* PREITO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 697.

No. 20–6744. ELLIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 117.

No. 20–6747. CLINTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 185.

No. 20–6748. DAVID *v.* ITUARTE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 828 Fed. Appx. 436.

No. 20–6752. TINOCO-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 829 Fed. Appx. 183.

No. 20–6753. WINN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 811 Fed. Appx. 1011.

No. 20–6755. TOVAR-REGALADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 974.

No. 20–6757. THOMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 918.

No. 20–6759. WEITERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 247.

No. 20–6761. WELLS *v.* WALLACE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 856.

No. 20–6763. MATHIS *v.* VIZCARRONDO. C. A. 11th Cir. Certiorari denied. Reported below: 792 Fed. Appx. 746.

No. 20–6766. VILLALONA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 20–6768. WATSON *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 20–6770. TREMINIO-TOBAR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 752.

No. 20–6771. SOTO-PEGUERO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 978 F. 3d 13.

No. 20–6774. SNODDY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 976 F. 3d 630.

No. 20–6776. BECTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 827 Fed. Appx. 105.

No. 20–6777. BAXTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 963 F. 3d 320.

No. 20–6778. ANDERSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 804 Fed. Appx. 8.

No. 20–6782. GUADRON-RODRIGUEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 752.

No. 20–6783. HARRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 272.

No. 20–6784. HUSSEIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 968 F. 3d 922.

No. 20–6787. PRYOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 824 Fed. Appx. 652.

No. 20–6789. OLMEDO-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 827 Fed. Appx. 447.

No. 20–6792. MIER-GARCES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 967 F. 3d 1003.

No. 20–6795. RICHARDS *v.* RICHARDS. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 20–6796. SANCHEZ *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 819 Fed. Appx. 675.

No. 20–6801. PALACIO *v.* SULLIVAN. C. A. 4th Cir. Certiorari denied. Reported below: 814 Fed. Appx. 774.

No. 20–6803. LINDSEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 969 F. 3d 136.

No. 20–6804. COMETA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 966 F. 3d 1285.

No. 20–6809. WOOD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 814 Fed. Appx. 430.

No. 20–6813. DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 814 Fed. Appx. 891.

No. 20–6816. RODRIGUEZ *v.* FILSON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 20–6817. QUINN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 826 Fed. Appx. 337.

No. 20–6820. LAWSON *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 52 Cal. App. 5th 1121, 267 Cal. Rptr. 3d 183.

No. 20–6823. BUTTERY *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 162 Ohio St. 3d 10, 2020-Ohio-2998, 164 N. E. 3d 294.

No. 20–6827. MAJID *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 963 F. 3d 1014.

No. 20–6829. BUTTERCASE *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 306 Neb. a.

No. 20–6831. GARCIA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 834 Fed. Appx. 134.

No. 20–6838. NSINANO *v.* WILKINSON, ACTING ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 554.

No. 20–6839. TOWNSEND *v.* TAYLOR, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 20–6842. D'ONOFRIO *v.* COSTCO WHOLESALE CORP. C. A. 11th Cir. Certiorari denied. Reported below: 964 F. 3d 1014.

No. 20–6844. ANGEL TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 808 Fed. Appx. 270.

No. 20–6850. WEEMS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied.

No. 20–6854. BAZAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 822 Fed. Appx. 263.

No. 20–6856. ODEN *v.* TURNER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 20–6857. PINA *v.* UNITED STATES (Reported below: 818 Fed. Appx. 384); and ZAMORA DE ANDA *v.* UNITED STATES (826 Fed. Appx. 406). C. A. 5th Cir. Certiorari denied.

No. 20–6859. SWAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 829 Fed. Appx. 304.

No. 20–6861. SANDERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–6863. FINDLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 806 Fed. Appx. 966.

No. 20–6864. HILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 831 Fed. Appx. 69.

No. 20–6867. Romero-Espinal *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 812 Fed. Appx. 151.

No. 20–6869. Radford *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 2020 IL 123975, 181 N. E. 3d 78.

No. 20–6870. Harris *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 960 F. 3d 1103.

No. 20–6873. Harrell *v.* California. Ct. App. Cal., 1st App. Dist., Div. 4. Certiorari denied.

No. 20–6878. Curran *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 812.

No. 20–6880. Esquivel *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 20–6883. Garner *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 969 F. 3d 550.

No. 20–6884. Andrade-Salas *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 7.

No. 20–6885. Vogel *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 20–6888. Pandey *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 800.

No. 20–6889. Bartunek *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 969 F. 3d 860.

No. 20–6895. Brennerman *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 816 Fed. Appx. 583.

No. 20–6903. Villa *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 133.

No. 20–6909. Gale *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 802 Fed. Appx. 787.

No. 20–6911. Alfaro-Granados *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 20–6915. Peterson *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 10 Cal. 5th 409, 472 P. 3d 382.

No. 20–6916. Patterson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 828 Fed. Appx. 311.

No. 20–6917. McAfee *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 20–6918. Moseley *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 980 F. 3d 9.

No. 20–6920. Moffitt *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 20–6921. Marquez-Gonzalez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 25.

No. 20–6925. Iraheta et al. *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 962 F. 3d 420.

No. 20–6926. Alegria Hernandez *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 20–6927. Freeney *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 802.

No. 20–6928. Ivey *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 30.

No. 20–6930. Lopez-Sanchez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 375.

No. 20–6931. Landreneau *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 967 F. 3d 443.

No. 20–6932. Jamaica-Hernandez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 16.

No. 20–6933. Martinez *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 846.

No. 20–6936. Tucker *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 961 F. 3d 105.

No. 20–6941. Dodge *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 963 F. 3d 379.

No. 20–6942. Camarena *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 478.

No. 20–6943. Coleman *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 20–6944. ZAVALA-MARTI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 20–6954. GAMEZ-CASTANEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 819 Fed. Appx. 279.

No. 20–6958. PAULINO *v.* GRIFFIN, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 20–6960. MCMICHAELS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2019 IL App (1st) 163053, 166 N. E. 3d 775.

No. 20–6961. PFOFF *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 20–6962. HERRERA-FUENTES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 20–6969. USRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–6971. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 371.

No. 20–6973. FANNIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 821 Fed. Appx. 358.

No. 20–6976. DOCTOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 838 Fed. Appx. 484.

No. 20–6977. DORMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 378.

No. 20–6978. CASTRO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 375.

No. 20–6979. WEBB *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 818 Fed. Appx. 376.

No. 20–6980. WEST *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 20–6989. SIMS *v.* SEIBEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 20–54. BRIDGE AINA LE'A, LLC *v.* HAWAII LAND USE COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 950 F. 3d 610.

JUSTICE THOMAS, dissenting.

I recently explained that "it would be desirable for us to take a fresh look at our regulatory takings jurisprudence, to see whether it can be grounded in the original public meaning of the Takings Clause of the Fifth Amendment or the Privileges or Immunities Clause of the Fourteenth Amendment." *Murr* v. *Wisconsin*, 582 U. S. 383, 419 (2017) (dissenting opinion).

Our current regulatory takings jurisprudence leaves much to be desired. A regulation effects a taking, we have said, whenever it "goes too far." *Pennsylvania Coal Co.* v. *Mahon*, 260 U. S. 393, 415 (1922). This occurs categorically whenever a regulation requires a physical intrusion, *Loretto* v. *Teleprompter Manhattan CATV Corp.*, 458 U. S. 419 (1982), or leaves land "without economically benefcia l or productive options for its use," *Lucas* v. *South Carolina Coastal Council*, 505 U. S. 1003, 1018 (1992). But such cases are exceedingly rare. See, *e. g.*, Brown & Merriam, On the Twenty-Fifth Anniversary of *Lucas*: Making or Breaking the Takings Claim, 102 Iowa L. Rev. 1847, 1849–1850 (2017) (noting that in more than 1,700 cases over a 25-year period, there were only 27 successful takings claims under *Lucas*—a success rate of just 1.6%). For all other regulatory takings claims, the Court has "generally eschewed any set formula for determining how far is too far," requiring lower courts instead "to engage in essentially ad hoc, factual inquiries." *Tahoe-Sierra Preservation Council, Inc.* v. *Tahoe Regional Planning Agency*, 535 U. S. 302, 326 (2002) (internal quotation marks omitted). Factors might include (1) "[t]he economic impact of the regulation on the claimant," (2) "the extent to which the regulation has interfered with distinct investment-backed expectations," and (3) "the character of the governmental action." *Penn Central Transp. Co.* v. *New York City*, 438 U. S. 104, 124 (1978); see also *Lingle* v. *Chevron U. S. A. Inc.*, 544 U. S. 528, 538–539 (2005). But courts must also "`weig[h] all the relevant circumstances.'" *Tahoe-Sierra Preservation Council*, 535 U. S., at 322. As one might imagine, nobody—not States, not property owners, not courts, nor juries—has any idea how to apply this standardless standard.

This case illustrates the point. After an 8-day trial and with the beneft of jury instructions endorsed by both parties, the jury

found a taking. The District Court, in turn, concluded that there was an adequate factual basis for this verdict. But the Ninth Circuit on appeal reweighed and reevaluated the same facts under the same legal tests to conclude that *no reasonable jury* could have found a taking. These starkly different outcomes based on the application of the same law indicate that we have still not provided courts with a "workable standard." Pomeroy, *Penn Central* After 35 Years: A Three Part Balancing Test or One Strike Rule? 22 Fed. Cir. B. J. 677, 678 (2013). The current doctrine is "so vague and indeterminate that it invites unprincipled, subjective decision making" dependent upon the decisionmaker. Echeverria, Is the *Penn Central* Three-Factor Test Ready for History's Dustbin? 52 Land Use L. & Zoning Dig. 3, 7 (2000); see also Eagle, The Four-Factor *Penn Central* Regulatory Takings Test, 118 Pa. St. L. Rev. 601, 602 (2014) ("[T]he doctrine has become a compilation of moving parts that are neither individually coherent nor collectively compatible"). A know-it-when-you-see-it test is no good if one court sees it and another does not.

Next year will mark a "century since *Mahon*," during which this "Court for the most part has refrained from" providing "definitive rules." *Murr*, 582 U. S., at 393. It is time to give more than just "some, but not too specific, guidance." *Palazzolo* v. *Rhode Island*, 533 U. S. 606, 617 (2001). If there is no such thing as a regulatory taking, we should say so. And if there is, we should make clear when one occurs.

I respectfully dissent.

No. 20–477. Day et al. *v.* Wooten et al. C. A. 7th Cir. Certiorari denied. Justice Barrett took no part in the consideration or decision of this petition. Reported below: 947 F. 3d 453.

No. 20–542. Republican Party of Pennsylvania *v.* DeGraffenreid, Acting Secretary of Pennsylvania, et al.; and

No. 20–574. Corman et al. *v.* Pennsylvania Democratic Party et al. Sup. Ct. Pa. Motions of Donald J. Trump for President, Inc., for leave to intervene as petitioner dismissed as moot. Motions of Thomas J. Randolph et al. for leave to intervene as respondents dismissed as moot. Motion of Honest Elections Project for leave to file brief as *amicus curiae* in No. 20–542 granted. Motion of White House Watch Fund et al. for leave to file brief as *amici curiae* in No. 20–574 granted. Certiorari denied. Reported below: 662 Pa. 39, 238 A. 3d 345.

JUSTICE THOMAS, dissenting.

The Constitution gives to each state legislature authority to determine the "Manner" of federal elections. Art. I, § 4, cl. 1; Art. II, § 1, cl. 2. Yet both before and after the 2020 election, nonlegislative offcia ls in various States took it upon themselves to set the rules instead. As a result, we received an unusually high number of petitions and emergency applications contesting those changes. The petitions here present a clear example. The Pennsylvania Legislature established an unambiguous deadline for receiving mail-in ballots: 8 p.m. on election day. Dissatisfed, the Pennsylvania Supreme Court extended that deadline by three days. The court also ordered offcia ls to count ballots received by the new deadline even if there was no evidence—such as a postmark—that the ballots were mailed by election day. That decision to rewrite the rules seems to have affected too few ballots to change the outcome of any federal election. But that may not be the case in the future. These cases provide us with an ideal opportunity to address just what authority nonlegislative offcia ls have to set election rules, and to do so well before the next election cycle. The refusal to do so is inexplicable.

I

Like most States, Pennsylvania has a long history of limiting the use of mail-in ballots. But in October 2019, the Pennsylvania Legislature overhauled its election laws. Relevant here, it gave all voters the option of voting by mail, and it extended the deadline for offcia ls to receive mail ballots by several days to 8 p.m. on election day. 2019 Pa. Leg. Serv. Act 2019–77. Then, in response to COVID–19, the legislature again amended the law but decided not to extend the receipt deadline further. See 2020 Pa. Leg. Serv. Act 2020–12.

Displeased with that decision, the Pennsylvania Democratic Party sued in state court. It argued that the court could extend the deadline through a vague clause in the State Constitution providing, in relevant part, that "[e]lections shall be free and equal." Art. I, § 5. The Pennsylvania Supreme Court agreed. On September 17, it held that this "free and equal" provision enabled the court to extend the deadline three days to accommodate concerns about postal delays.

Petitioners promptly moved for emergency relief, f ling an application for a stay on September 28. That application easily met our criteria for granting relief. See *Hollingsworth* v. *Perry*, 558

U. S. 183, 190 (2010) (*per curiam*). Not only did parties on both sides agree that the issue warranted certiorari, but there also was no question that petitioners faced irreparable harm. See *Maryland* v. *King*, 567 U. S. 1301, 1303 (2012) (ROBERTS, C. J., in chambers) ("`[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury' "). Petitioners further established a fair prospect of certiorari and reversal. For more than a century, this Court has recognized that the Constitution "operat[es] as a limitation upon the State in respect of any attempt to circumscribe the legislative power" to regulate federal elections. *McPherson* v. *Blacker*, 146 U. S. 1, 25 (1892). Because the Federal Constitution, not state constitutions, gives state legislatures authority to regulate federal elections, petitioners presented a strong argument that the Pennsylvania Supreme Court's decision violated the Constitution by overriding "the clearly expressed intent of the legislature." *Bush* v. *Gore*, 531 U. S. 98, 120 (2000) (Rehnquist, C. J., concurring). Despite petitioners' strong showing that they were entitled to relief, we divided 4–4 and thus failed to act. *Scarnati* v. *Boockvar*, 592 U. S. 1022 (2020).

Four days later, petitioners filed the first of these petitions and moved to expedite consideration so the Court could decide the merits before election day. But by that time, election day was just over a week away. So we denied the motion to expedite even though the question was of "national importance" and there was a "strong likelihood that the State Supreme Court decision violates the Federal Constitution." *Republican Party of Pa.* v. *Boockvar*, 592 U. S. 1068, 1070 (2020) (statement of ALITO, J.).

II

Now that the petitions are before us under the normal briefing schedule, I see no reason to avoid them. Indeed, the day after we denied petitioner's motion to expedite in No. 20–542, the case became even more worthy of review. The Eighth Circuit split from the Pennsylvania Supreme Court, granting a preliminary injunction against an attempt by the Minnesota Secretary of State to extend the legislature's deadline to receive ballots by seven days. *Carson* v. *Simon*, 978 F. 3d 1051, 1059–1060, 1062 (2020). This divide on an issue of undisputed importance would justify certiorari in almost any case. That these cases concern federal elections only further heightens the need for review.

A

Elections are "of the most fundamental signifcance under our constitutional structure." *Illinois Bd. of Elections* v. *Socialist Workers Party*, 440 U. S. 173, 184 (1979). Through them, we exercise self-government. But elections enable self-governance only when they include processes that "giv[e] citizens (including the losing candidates and their supporters) confdence in the fairness of the election." See *Democratic National Committee* v. *Wisconsin State Legislature*, 592 U. S. 1039, 1044 (2020) (KAVANAUGH, J., concurring in denial of application to vacate stay); accord, *Purcell* v. *Gonzalez*, 549 U. S. 1, 4 (2006) (*per curiam*) ("Confdence in the integrity of our electoral processes is essential to the functioning of our participatory democracy").

Unclear rules threaten to undermine this system. They sow confusion and ultimately dampen confdence in the integrity and fairness of elections. To prevent confusion, we have thus repeatedly—although not as consistently as we should—blocked rule changes made by courts close to an election. See *Purcell*, *supra*.[1]

An election system lacks clear rules when, as here, different offcia ls dispute who has authority to set or change those rules. This kind of dispute brews confusion because voters may not know which rules to follow. Even worse, with more than one system of rules in place, competing candidates might each declare victory under different sets of rules.

We are fortunate that the Pennsylvania Supreme Court's decision to change the receipt deadline for mail-in ballots does not appear to have changed the outcome in any federal election. JUSTICE ALITO ordered the county boards to segregate ballots received later than the deadline set by the legislature. Order in *Republican Party of Pa.* v. *Boockvar*, No. 20A84 (Nov. 6, 2020). And none of the parties contend that those ballots made an outcome-determinative difference in any relevant federal election.

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[1] See also *Merrill* v. *People First of Ala.*, 592 U. S. 1035 (2020) (*Merrill II*); *Andino* v. *Middleton*, 592 U. S. 906 (2020); *Merrill* v. *People First of Ala.*, 591 U. S. 1024 (2020) (*Merrill I*); *Republican National Committee* v. *Democratic National Committee*, 589 U. S. 423 (2020) (*per curiam*); *Veasey* v. *Perry*, 574 U. S. 951 (2014); *North Carolina* v. *League of Women Voters*, 574 U. S. 927 (2014) (allowing enjoined provisions to remain in effect for the upcoming election).

But we may not be so lucky in the future. Indeed, a separate decision by the Pennsylvania Supreme Court may have already altered an election result. A different petition argues that after election day the Pennsylvania Supreme Court nullifed the legislative requirement that voters write the date on mail-in ballots. See Pet. for Cert., O. T. 2020, No. 20–845. According to public reports, one candidate for a state senate seat claimed victory under what she contended was the legislative rule that dates must be included on the ballots. A federal court noted that this candidate would win by 93 votes under that rule. *Ziccarelli* v. *Allegheny Cty. Bd. of Elections*, 2021 WL 101683, *1 (WD Pa., Jan. 12, 2021). A second candidate claimed victory under the contrary rule announced by the Pennsylvania Supreme Court. He was seated.

That is not a prescription for confdence. Changing the rules in the middle of the game is bad enough. Such rule changes by offcia ls who may lack authority to do so is even worse. When those changes alter election results, they can severely damage the electoral system on which our self-governance so heavily depends. If state offcia ls have the authority they have claimed, we need to make it clear. If not, we need to put an end to this practice now before the consequences become catastrophic.

B

At frst blush, it may seem reasonable to address this question when it next arises. After all, the 2020 election is now over, and the Pennsylvania Supreme Court's decision was not outcome determinative for any federal election.

But whatever force that argument has in other contexts, it fails in the context of elections. For at least three reasons, the Judiciary is ill equipped to address problems—including those caused by improper rule changes—through postelection litigation.

First, postelection litigation is truncated by fr m timelines. That is especially true for Presidential elections, which are governed by the Electoral Count Act, passed in 1887. That Act sets federal elections for the day after the frst Monday in November—last year, November 3. See 3 U. S. C. § 1. Under a statutory safe-harbor provision, a State has about fve weeks to address all disputes and make a "f nal determination" of electors if it wants that decision to "be conclusive." § 5. Last year's deadline fell on December 8, and the Electoral College voted just six days

later. § 7. Five to six weeks for judicial testing is diffcu lt enough for straightforward cases. For factually complex cases, compressing discovery, testimony, and appeals into this timeline is virtually impossible.

Second, this timeframe imposes especially daunting constraints when combined with the expanded use of mail-in ballots. Voting by mail was traditionally limited to voters who had def ned, well-documented reasons to be absent. See, *e. g.*, Moreton, Note, Voting by Mail, 58 S. Cal. L. Rev. 1261, 1261–1264 (1985). In recent years, however, many States have become more permissive, a trend greatly accelerated by COVID–19. In Pennsylvania, for example, mail-in ballots composed just 4% of ballots cast in 2018. But the legislature dramatically expanded the process in 2019, thereby increasing the mail-in ballots cast in 2020 to 38%.

This expansion impedes postelection judicial review because litigation about mail-in ballots is substantially more complicated. For one thing, as election administrators have long agreed, the risk of fraud is "vastly more prevalent" for mail-in ballots. Liptak, Error and Fraud at Issue as Absentee Voting Rises, N. Y. Times, Oct. 6, 2012. The reason is simple: "[A]bsentee voting replaces the oversight that exists at polling places with something akin to an honor system." *Ibid.* Heather Gerken, now dean of Yale Law School, explained in the same New York Times article that absentee voting allows for "simpler and more effective alternatives to commit fraud" on a larger scale, such as stealing absentee ballots or stuff ng a ballot box, which explains "`why all the evidence of stolen elections involves absentee ballots and the like.'" *Ibid.* The same article states that "[v]oting by mail is now common enough and problematic enough that election experts say there have been multiple elections in which no one can say with confdence which candidate was the deserved winner." *Ibid.*

Pennsylvania knows this well. Even before widespread absentee voting, a federal court had reversed the result of a state senate election in Philadelphia after f nding that the supposedly prevailing candidate "conducted an illegal absentee ballot conspiracy and that the [election offcia ls] covertly facilitated the scheme with the specifc purpose of ensuring a victory for" that candidate. *Marks* v. *Stinson*, 1994 WL 146113, *29, *36 (ED Pa., Apr. 26, 1994). This problem is not unique to Pennsylvania, and it has not gone away. Two years ago, a congressional election in North Carolina was thrown out in the face of evidence of tampering with

absentee ballots. Because fraud is more prevalent with mail-in ballots, increased use of those ballots raises the likelihood that courts will be asked to adjudicate questions that go to the heart of election confdence .[2]

Fraud is not the only aspect of mail-in ballots that complicates postelection judicial review. Also relevant are the corresponding safeguards that States put in place to ameliorate that heightened risk of fraud. To balance the "strong interest" of ballot access with the "`compelling interest in preserving the integrity of [the] election process,'" *Purcell*, 549 U. S., at 4, many States have expanded mail-in ballots but sought to deter fraud—and create mechanisms to detect it—by requiring voters to return ballots in signed, dated secrecy envelopes. Some States also require witness or notary signatures. Tallying these ballots tends to be more labor intensive, involves a high degree of subjective judgment (*e. g.*, verifying signatures), and typically leads to a far higher rate of ballot challenges and rejections. Litigation over these ballots can require substantial discovery and labor-intensive fact review. In some cases, it might require sifting through hundreds of thousands or millions of ballots. It also may require subjective judgment calls about the validity of thousands of ballots. Judicial review in this situation is diffcu lt enough even when the rules are clear and the number of challenged ballots small. Adding a dispute about who can set or change the rules greatly exacerbates the problem.

Third, and perhaps most signifcant, postelection litigation sometimes forces courts to make policy decisions that they have no business making. For example, when an offcia l has improperly changed the rules, but voters have already relied on that change, courts must choose between potentially disenfranchising a subset of voters and enforcing the election provisions—such as receipt deadlines—that the legislature believes are necessary for election integrity. That occurred last year. After a court wrongly altered South Carolina's witness requirement for absentee ballots, this Court largely reinstated the original rule, but

[2] We are fortunate that many of the cases we have seen alleged only improper rule changes, not fraud. But that observation provides only small comfort. An election free from strong evidence of systemic fraud is not alone suffcient for election confdence . Also important is the assurance that fraud will not go undetected. Cf. *McCutcheon* v. *Federal Election Comm'n*, 572 U. S. 185, 191, 206–207 (2014) (plurality opinion).

declined to apply it to ballots already cast. *Andino* v. *Middleton*, 592 U. S. 906 (2020). Settling rules well in advance of an election rather than relying on postelection litigation ensures that courts are not put in that untenable position.

In short, the postelection system of judicial review is at most suitable for garden-variety disputes. It generally cannot restore the state of affairs before an election. And it is often incapable of testing allegations of systemic maladministration, voter suppression, or fraud that go to the heart of public confdence in election results. That is obviously problematic for allegations backed by substantial evidence. But the same is true where allegations are incorrect. After all, "[c]onfdence in the integrity of our electoral process is essential to the functioning of our participatory democracy." *Purcell*, *supra*, at 4; cf. *McCutcheon* v. *Federal Election Comm'n*, 572 U. S. 185, 191, 206–207 (2014) (plurality opinion) (identifying a compelling interest in rooting out the mere "appearance of corruption" in the political process). An incorrect allegation, left to fester without a robust mechanism to test and disprove it, "drives honest citizens out of the democratic process and breeds distrust of our government." *Purcell*, *supra*, at 4.

III

Because the judicial system is not well suited to address these kinds of questions in the short time period available immediately after an election, we ought to use available cases outside that truncated context to address these admittedly important questions. Here, we have the opportunity to do so almost two years before the next federal election cycle. Our refusal to do so by hearing these cases is befuddling. There is a clear split on an issue of such great importance that both sides previously asked us to grant certiorari. And there is no dispute that the claim is suffciently meritorious to warrant review. By voting to grant emergency relief in October, four Justices made clear that they think petitioners are likely to prevail. Despite pressing for review in October, respondents now ask us not to grant certiorari because they think the cases are moot. That argument fails.

The issue presented is capable of repetition, yet evades review. This exception to mootness, which the Court routinely invokes in election cases, "applies where (1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same com-

plaining party will be subject to the same action again." *Davis* v. *Federal Election Comm'n*, 554 U. S. 724, 735 (2008) (internal quotation marks omitted) (resolving a dispute from the 2006 election); see also *Anderson* v. *Celebrezze*, 460 U. S. 780, 784, and n. 3 (1983) (resolving a dispute from the 1980 election). Here, the Pennsylvania Supreme Court issued its decision about six weeks before the election, leaving little time for review in this Court. And there is a reasonable expectation that these petitioners—the State Republican Party and legislators—will again confront nonlegislative offcia ls altering election rules. In fact, various petitions claim that no fewer than four other decisions of the Pennsylvania Supreme Court implicate the same issue.[3] Future cases will arise as lower state courts apply those precedents to justify intervening in elections and changing the rules.

* * *

One wonders what this Court waits for. We failed to settle this dispute before the election, and thus provide clear rules. Now we again fail to provide clear rules for future elections. The decision to leave election law hidden beneath a shroud of doubt is baff ing. By doing nothing, we invite further confusion and erosion of voter confdence . Our fellow citizens deserve better and expect more of us. I respectfully dissent.

JUSTICE ALITO, with whom JUSTICE GORSUCH joins, dissenting.

I agree with JUSTICE THOMAS that we should grant review in these cases. They present an important and recurring constitutional question: whether the Elections or Electors Clauses of the United States Constitution, Art. I, § 4, cl. 1; Art. II, § 1, cl. 2, are violated when a state court holds that a state constitutional provision overrides a state statute governing the manner in which a federal election is to be conducted. That question has divided the lower courts,* and our review at this time would be greatly benefcia l.

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[3] Pet. for Cert., O. T. 2020, No. 20–845 (challenging three decisions); Pet. for Cert., O. T. 2020, No. 20–810 (challenging one decision).

*See *Pennsylvania Democratic Party* v. *Boockvar*, 662 Pa. 39, 79–83, 238 A. 3d 345, 369–372 (2020); *Carson* v. *Simon*, 978 F. 3d 1051, 1059–1060 (CA8 2020).

In the cases now before us, a statute enacted by the Pennsylvania Legislature unequivocally requires that mailed ballots be received by 8 p.m. on election day. Pa. Stat. Ann., Tit. 25, §§ 3146.6(c), 3150.16(c) (Purdon 2020). Nevertheless, the Pennsylvania Supreme Court, citing a provision of the State Constitution mandating that elections "be free and equal," Art. I, § 5, altered that deadline and ordered that mailed ballots be counted if received up to three days *after* the election, *Pennsylvania Democratic Party* v. *Boockvar*, 662 Pa. 39, 81–83, 238 A. 3d 345, 362, 371–372 (2020). *Both the state Republican and Democratic parties urged us to grant review and decide this question before the 2020 election.* See Application for Stay in *Republican Party of Pa.* v. *Boockvar*, No. 20A54, pp. 2–3; Democratic Party of Pennsylvania Response to Application for Stay in No. 20A54, pp. 8–9. But the Court, by an evenly divided vote, refused to do so. Nos. 20A53 and 20A54, 592 U. S. 1022 and 1023 (2020) (THOMAS, ALITO, GORSUCH, and KAVANAUGH, JJ., noting dissents). That unfortunate decision virtually ensured that this important question could not be decided before the election. See *Republican Party of Pa.* v. *Boockvar*, 592 U. S. 1068 (2020) (statement of ALITO, J., joined by THOMAS and GORSUCH, JJ.).

Now, the election is over, and there is no reason for refusing to decide the important question that these cases pose. "The provisions of the Federal Constitution conferring on state legislatures, not state courts, the authority to make rules governing federal elections would be meaningless if a state court could override the rules adopted by the legislature simply by claiming that a state constitutional provision gave the courts the authority to make whatever rules it thought appropriate for the conduct of a fair election." *Id.*, at 1070; see also *Bush* v. *Palm Beach County Canvassing Bd.*, 531 U. S. 70, 76 (2000) (*per curiam*). A decision in these cases would not have any implications regarding the 2020 election. (Because Pennsylvania election offcia ls were ordered to separate mailed ballots received after the statutory deadline, see Order in *Republican Party of Pa.* v. *Boockvar*, No. 20A84 (Nov. 6, 2020), we know that the State Supreme Court's decision had no effect on the outcome of any election for federal offce in Pennsylvania.) But a decision would provide invaluable guidance for future elections.

Some respondents contend that the completion of the 2020 election rendered these cases moot and that they do not fall within

the mootness exception for cases that present questions that are "capable of repetition" but would otherwise evade review. See, *e. g.*, *Davis* v. *Federal Election Comm'n*, 554 U. S. 724, 735–736 (2008). They argue that the Pennsylvania Supreme Court's decision "arose from an extraordinary and unprecedented confuence of circumstances"—specifca lly, the COVID–19 pandemic, an increase in mail-in voting, and Postal Service delays—and that such a perfect storm is not likely to recur. Brief in Opposition for Boockvar in No. 20–542, pp. 1, 9; see also Brief in Opposition for Pennsylvania Democratic Party in Nos. 20–542 and 20–574, p. 12.

That argument fails for three reasons. First, it does not acknowledge the breadth of the Pennsylvania Supreme Court's decision. That decision claims that a state constitutional provision guaranteeing "free and equal" elections gives the Pennsylvania courts the authority to override even very specifc and unambiguous rules adopted by the legislature for the conduct of federal elections. See *Pennsylvania Democratic Party* v. *Boockvar*, 662 Pa. 39, 81, 238 A. 3d 345, 371 (2020) (relying on the court's "broad authority to craft meaningful remedies when required" (internal quotation marks omitted)). That issue is surely capable of repetition in future elections. Indeed, it would be surprising if parties who are unhappy with the legislature's rules do not invoke this decision and ask the state courts to substitute rules that they f nd more advantageous.

Second, the suggestion that we are unlikely to see a recurrence of the exact circumstances we saw this fall misunderstands the applicable legal standard. In order for a question to be capable of repetition, it is not necessary to predict that history will repeat itself at a very high level of specifcity. See *Federal Election Comm'n* v. *Wisconsin Right to Life, Inc.*, 551 U. S. 449, 463 (2007).

Third, it is highly speculative to forecast that the Pennsylvania Supreme Court will not f nd that conditions at the time of a future federal election are materially similar to those last fall. The primary election for Pennsylvania congressional candidates is scheduled to occur in 15 months, and the rules for the conduct of elections should be established well in advance of the day of an election. We may hope that by next spring the pandemic will no longer affect daily life, but that is uncertain. In addition, the state court's decision was not based solely on the pandemic but was also grounded in part on broader concerns about the operation of the Postal Service, 662 Pa., at 72, 81, 238 A. 3d, at 365, 371 and concerns of this nature may persist or resurface. As voting

by mail becomes more common and more popular, the volume of mailed ballots may continue to increase and thus pose delivery problems similar to those anticipated in 2020.

For these reasons, the cases now before us are not moot. There is a "reasonable expectation" that the parties will face the same question in the future, see *Wisconsin Right to Life, Inc.*, 551 U. S., at 463, and that the question will evade future pre-election review, just as it did in these cases.

These cases call out for review, and I respectfully dissent from the Court's decision to deny certiorari.

No. 20–565. MATTHEWS ET UX. *v.* BECKER ET AL. C. A. 11th Cir. Motion of respondents for damages and costs pursuant to this Court's Rule 42.2 denied. Certiorari denied. Reported below: 817 Fed. Appx. 731.

No. 20–634. ROBINSON *v.* WEBSTER COUNTY, MISSISSIPPI, ET AL. C. A. 5th Cir. Motion of Network for Victim Recovery of DC for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 825 Fed. Appx. 192.

No. 20–810. KELLY, UNITED STATES CONGRESSMAN, ET AL. *v.* PENNSYLVANIA ET AL. Sup. Ct. Pa. Motion of 28 Current Members of the House of Representatives for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 663 Pa. 114, 240 A. 3d 1255.

No. 20–815. KING ET AL. *v.* WHITMER, GOVERNOR OF MICHIGAN, ET AL. C. A. 6th Cir. Certiorari before judgment denied.

No. 20–845. DONALD J. TRUMP FOR PRESIDENT, INC. *v.* DEGRAFFENREID, ACTING SECRETARY OF PENNSYLVANIA, ET AL. (Reported below: 662 Pa. 718, 240 A. 3d 591); DONALD J. TRUMP FOR PRESIDENT, INC. *v.* PHILADELPHIA COUNTY BOARD OF ELECTIONS ET AL. (663 Pa. 145, 241 A. 3d 339); and DONALD J. TRUMP FOR PRESIDENT, INC. *v.* ELKIN ET AL. (663 Pa. 283, 241 A. 3d 1058). Sup. Ct. Pa. Motions of Constitutional Attorneys and Republican Party of Pennsylvania for leave to file briefs as *amici curiae* granted. Certiorari denied.

No. 20–913. WILBORN *v.* JONES, ACTING WARDEN. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 964 F. 3d 618.

No. 20–6531. MAY RUIZ *v.* BAUGHMAN, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 812 Fed. Appx. 447.

No. 20–6560. FEREBEE *v.* STAPLETON ET AL. C. A. 4th Cir. Certiorari before judgment denied.

No. 20–6574. MARTIN *v.* LEDFORD. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition.

No. 20–6800. MILLER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 822 Fed. Appx. 484.

No. 20–6893. WALLACE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition.

Rehearing Denied

No. 19–8498. DIGGS *v.* GALLUCCI, CHIEF OF POLICE, CITY OF CARLSBAD, CALIFORNIA; and DIGGS *v.* SHIOMOTO, DIRECTOR, CALIFORNIA DEPARTMENT OF MOTOR VEHICLES, 592 U. S. 929.

No. 19–8771. RISENHOOVER *v.* MUNIZ, WARDEN, 592 U. S. 941;

No. 20–267. BRAUNSTEIN *v.* BRAUNSTEIN, 592 U. S. 1086;

No. 20–337. LYNN *v.* BROWN ET AL., 592 U. S. 1105;

No. 20–458. BROWN *v.* DEPARTMENT OF LABOR, 592 U. S. 1125;

No. 20–505. RUTTKAMP *v.* BANK OF NEW YORK MELLON, FKA BANK OF NEW YORK, 592 U. S. 1150;

No. 20–606. DREVALEVA *v.* CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS; DREVALEVA *v.* COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT; and DREVALEVA *v.* COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT, 592 U. S. 1151;

No. 20–608. DREVALEVA *v.* CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS; and DREVALEVA *v.* COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT, 592 U. S. 1151;

No. 20–613. COULTAS *v.* TICHENOR, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS YAMHILL COUNTY PROSECUTOR, ET AL., 592 U. S. 1127;

No. 20–618. Routten *v.* Routten, 592 U. S. 1151;

No. 20–629. In re Beggs et ux., 592 U. S. 1123;

No. 20–5193. McWhorter *v.* United States, 592 U. S. 967;

No. 20–5316. Smith *v.* Inch, Secretary, Florida Department of Corrections, et al., 592 U. S. 1005;

No. 20–5399. Latimer, aka Smith *v.* Jones et al., 592 U. S. 1027;

No. 20–5422. Miller *v.* Deal, Warden, 592 U. S. 1151;

No. 20–5502. Kirk *v.* Richardson et al., 592 U. S. 1077;

No. 20–5632. Shawn *v.* Eighth Judicial District Court of Nevada, Clark County, 592 U. S. 1088;

No. 20–5635. Smith *v.* Warden, Federal Correctional Institution Beaumont, 592 U. S. 1010;

No. 20–5701. Narayan *v.* Prasad, 592 U. S. 1107;

No. 20–5703. Miller *v.* Phillips et al., 592 U. S. 1107;

No. 20–5724. Johnson *v.* Gibson, Judge, et al., 592 U. S. 1108;

No. 20–5732. Seadin *v.* Williams, Director, Colorado Department of Corrections, 592 U. S. 1089;

No. 20–5931. Petrano et ux. *v.* Baylor, 592 U. S. 1130;

No. 20–6059. Duran *v.* Allison, Secretary, California Department of Corrections and Rehabilitation, 592 U. S. 1132;

No. 20–6241. Smith *v.* Kelly Services, Inc., et al., 592 U. S. 1153; and

No. 20–6259. de Jesus-Concepcion *v.* United States, 592 U. S. 1137. Petitions for rehearing denied.

No. 20–388. Lingfei Sun *v.* City of New York, New York, et al., 592 U. S. 1137. Petition for rehearing denied. Justice Sotomayor took no part in the consideration or decision of this petition.

No. 20–5680. Steele *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division, 592 U. S. 1107. Motion for leave to file petition for rehearing denied.