PRELIMINARY PRINT—ORDERS

VOLUME 594 U. S. PART 2

PAGES 920–986

OFFICIAL REPORTS

OF

THE SUPREME COURT

JUNE 24 THROUGH SEPTEMBER 30, 2021

REBECCA A. WOMELDORF

REPORTER OF DECISIONS

NOTICE: This preliminary print is subject to formal revision before the bound volume is published. Users are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, pio@supremecourt.gov, of any typographical or other formal errors.

REPORTER'S NOTE

Orders commencing with June 24, 2021, begin with page 920. The preceding orders in 594 U. S., from June 17 through June 23, 2021, were reported in Part 1, at 901–919. These page numbers are the same as they will be in the bound volume, thus making the *permanent* citations available upon publication of the preliminary prints of the United States Reports.

JUNE 24, 2021

Dismissal Under Rule 46

No. 20–1142. Atlantic Richfield Co. *v.* Asarco LLC. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 975 F. 3d 859.

JUNE 28, 2021

Certiorari Granted—Vacated and Remanded. (See also *Lombardo* v. *St. Louis*, 594 U. S. 464 (2021) (*per curiam*); and *Pakdel* v. *City and County of San Francisco*, 594 U. S. 474 (2021) (*per curiam*).)

No. 19–1459. Polaris Innovations Ltd. *v.* Kingston Technology Co., Inc., et al. (three judgments). Reported below: 792 Fed. Appx. 819 (first judgment) and 820 (second judgment). C. A. Fed. Cir.;

No. 20–74. Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Luoma et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Pfizer Inc. et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Stuart, as Trustee for the Cecil G. Stuart and Donna M. Stuart Revocable Living Trust Agreement, et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Vilox Technologies, LLC, et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Vaporstream, Inc., et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Document Security Systems, Inc., et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* VirnetX Inc. et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Concert Pharmaceuticals, Inc., et al.; Iancu, Under Secretary of Commerce for Intellectual

Property and Director, United States Patent and Trademark Office *v.* AgroFresh, Inc., et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Polaris Innovations Ltd. et al.; United States *v.* Polaris Innovations Ltd. et al. (Reported below: 792 Fed. Appx. 819); Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Document Security Systems, Inc., et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Sound View Innovations, LLC, et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Sound View Innovations, LLC, et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* VirnetX Inc.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Drone-Control, LLC, et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Promptu Systems Corp. et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Iron Oak Technologies, LLC, et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* High 5 Games, LLC, et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Protiva Biotherapeutics, Inc., et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Promptu Systems Corp. et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Polaris Innovations Ltd. et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Amgen Inc. et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Steuben Foods, Inc., et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* North Star Innovations, Inc., et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Polaris Innovations Ltd. et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Next Caller, Inc., et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Horizon Pharma USA, Inc., et al.; United States *v.* Rovi Guides, Inc., et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Dali Wireless Inc. et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Intex Recreation Corp. et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Team Worldwide Corp. et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* GREE, Inc., et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Koninklijke KPN N. V. et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Personalized Media Communications, LLC, et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* JHO Intellectual Property Holdings, LLC; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Signature Systems, LLC, et al.; and Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Boloro Global Ltd. (Reported below: 963 F. 3d 1380). C. A. Fed. Cir.; and

No. 20–314. RPM International Inc. et al. *v.* Stuart, Trustee for the Cecil G. Stuart and Donna M. Stuart Revocable Living Trust Agreement, et al. C. A. Fed. Cir. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *United States* v. *Arthrex, Inc.*, 594 U. S. 1 (2021).

No. 20–853. Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Fall Line Patents, LLC, et al. (Reported below: 818 Fed. Appx. 1014); Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Bottomline Technologies (DE) Inc.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* Marx; United States *v.* Snyders Heart Valve LLC et al.; Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* C. A. Casyso GmbH et al.; and Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office *v.* UNILOC 2017 LLC et al. C. A. Fed. Cir. Certiorari granted, judgments vacated, and case remanded for further consideration in light of *United States* v. *Arthrex, Inc.*, 594 U. S. 1 (2021). Justice Alito took no part in the consideration or decision of this petition.

No. 20–7523. Bryant *v.* Louisiana. Ct. App. La., 2d 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 *Ramos* v. *Louisiana*, 590 U. S. 83 (2020). Reported below: 53,321 (La. App. 2 Cir. 3/4/20), 293 So. 3d 701.

Certiorari Dismissed

No. 20–7836. Allen *v.* Wire 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*). Reported below: 837 Fed. Appx. 251.

Miscellaneous Orders

No. D–3071. In re Disbarment of Meagher. Disbarment entered. [For earlier order herein, see 592 U. S. 1349.]

No. D–3074. In re Disbarment of Morgan. Disbarment entered. [For earlier order herein, see 593 U. S. 910.]

No. D–3077. In re Disbarment of Adges. Disbarment entered. [For earlier order herein, see 593 U. S. 911.]

No. D–3078. In re Disbarment of Caro. Disbarment entered. [For earlier order herein, see 593 U. S. 911.]

No. D–3079. In re Disbarment of Fasanaro. Disbarment entered. [For earlier order herein, see 593 U. S. 911.]

No. 20M99. Johnson *v.* Wells Fargo Bank, N. A., et al.; and
No. 20M101. Rice *v.* Vanihel, Warden. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 20M100. Whitehead *v.* United States District Court for the Western District of Arkansas. Motion for leave to proceed as a veteran denied.

No. 20M102. Drakes *v.* United States. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 152, Orig. Montana et al. *v.* Washington. Motion for leave to file bill of complaint denied. Justice Thomas and Justice Alito would grant the motion. [For earlier order herein, see 592 U. S. 908.]

No. 154, Orig. New Hampshire *v.* Massachusetts. Motion for leave to file bill of complaint denied. Justice Thomas and Justice Alito would grant the motion. [For earlier order herein, see 592 U. S. 1234.]

No. 20–1143. Badgerow *v.* Walters et al. C. A. 5th Cir. [Certiorari granted, 593 U. S. 984.] Motion of petitioner to dispense with printing joint appendix granted.

No. 20–7883. O'Donnell *v.* Saul, Commissioner of Social Security. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until July 19, 2021, within which to pay the docketing fee required by this Court's Rule 38(a).

No. 20–8001. In re Pizzuto;
No. 20–8205. In re McKenzie; and
No. 20–8222. In re Williams. Petitions for writs of habeas corpus denied.

No. 20–8226. In re Boyd. Petition for writ of habeas corpus denied. Justice Alito took no part in the consideration or decision of this petition.

No. 20–8198. In re Smith. 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. 20–8157. In re Sandlain. 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.

Certiorari Granted

No. 20–1029. City of Austin, Texas *v.* Reagan National Advertising of Austin, Inc., et al. C. A. 5th Cir. Certiorari granted. Reported below: 972 F. 3d 696.

No. 20–979. Patel et al. *v.* Garland, Attorney General. C. A. 11th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 971 F. 3d 1258.

Certiorari Denied

No. 19–66. Ricks *v.* Idaho Contractors Board et al. Ct. App. Idaho. Certiorari denied. Reported below: 164 Idaho 689, 435 P. 3d 1.

No. 19–648. CACI Premier Technology, Inc. *v.* Al Shimari et al. C. A. 4th Cir. Certiorari denied. Reported below: 775 Fed. Appx. 758.

No. 19–841. United States House of Representatives *v.* Texas et al. C. A. 5th Cir. Certiorari denied.

No. 20–28. PricewaterhouseCoopers LLP et al. *v.* Laurent, Individually and on Behalf of All Others Similarly Situated, et al. C. A. 2d Cir. Certiorari denied. Reported below: 945 F. 3d 739.

No. 20–92. Comcast Cable Communications, LLC *v.* Promptu Systems Corp. et al. (two judgments);

No. 20–271. Vilox Technologies, LLC *v.* Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office; Luoma *v.* Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office; and Dali Wireless, Inc. *v.* Iancu, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office;

No. 20–414. Rovi Guides, Inc. *v.* Comcast Cable Communications, LLC, et al; and

No. 20–679. Micron Technology, Inc. *v.* North Star Innovations, Inc. C. A. Fed. Cir. Certiorari denied.

No. 20–402. Richardson et al., Individually and as Parents and Next Friends of L *v.* Omaha School District. C. A. 8th Cir. Certiorari denied. Reported below: 957 F. 3d 869.

No. 20–1013. Simon *v.* Director, Office of Workers' Compensation Programs, Department of Labor, et al. C. A. 5th Cir. Certiorari denied. Reported below: 816 Fed. Appx. 1006.

No. 20–1113. American Hospital Assn. et al. *v.* Becerra, Secretary of Health and Human Services. C. A. D. C. Cir. Certiorari denied. Reported below: 964 F. 3d 1230.

No. 20–1129. Flynn *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 969 F. 3d 873.

No. 20–1158. North American Mission Board of the Southern Baptist Convention, Inc. *v.* McRaney. C. A. 5th Cir. Certiorari denied. Reported below: 966 F. 3d 346.

No. 20–1173. Pineda-Sabillon *v.* Garland, Attorney General. C. A. 5th Cir. Certiorari denied. Reported below: 826 Fed. Appx. 420.

No. 20–1174. Lippard et vir *v.* Holleman et al. Ct. App. N. C. Certiorari denied. Reported below: 271 N. C. App. 401, 844 S. E. 2d 591.

No. 20–1183. Tri-State Zoological Park of Western Maryland, Inc., et al. *v.* People for the Ethical Treatment of Animals, Inc. C. A. 4th Cir. Certiorari denied. Reported below: 843 Fed. Appx. 493.

No. 20–1203. Moose Jooce et al. *v.* Food and Drug Administration et al. C. A. D. C. Cir. Certiorari denied. Reported below: 981 F. 3d 26.

No. 20–1215. North American Meat Institute *v.* Bonta, Attorney General of California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 825 Fed. Appx. 518.

No. 20–1218. Edwards et al. *v.* Burt, Warden, et al. C. A. 6th Cir. Certiorari denied. Reported below: 823 Fed. Appx. 326.

No. 20–1286. Sacramento County, California *v.* Hardesty et al. C. A. 9th Cir. Certiorari denied. Reported below: 824 Fed. Appx. 474.

No. 20–1294. Campbell et al. *v.* Pennsylvania School Boards Assn. et al. C. A. 3d Cir. Certiorari denied. Reported below: 972 F. 3d 213.

No. 20–1306. Walker *v.* Mississippi. Sup. Ct. Miss. Certiorari denied. Reported below: 303 So. 3d 720.

No. 20–1313. Shivkov et al. *v.* Artex Risk Solutions, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 974 F. 3d 1051.

No. 20–1354. City of Portland, Oregon, et al. *v.* Federal Communications Commission et al. C. A. 9th Cir. Certiorari denied. Reported below: 969 F. 3d 1020.

No. 20–1357. Board of County Commissioners of Weld County, Colorado *v.* Exby-Stolley. C. A. 10th Cir. Certiorari denied. Reported below: 979 F. 3d 784.

No. 20–1376. Abatti et al. *v.* Imperial Irrigation District. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied. Reported below: 52 Cal. App. 5th 236, 266 Cal. Rptr. 3d 26.

No. 20–1448. Corbello *v.* Valli et al. C. A. 9th Cir. Certiorari denied. Reported below: 974 F. 3d 965.

No. 20–1465. Chang Wang et al. *v.* Carter-Garrett et al. Ct. App. Cal., 1st App. Dist., Div. 5. Certiorari denied.

No. 20–1473. Crittenden *v.* Crittenden. Ct. App. Ga. Certiorari denied. Reported below: 354 Ga. App. 672, 840 S. E. 2d 496.

No. 20–1475. Perkins *v.* Mischtian, Judge, County Court at Law 2, Bell County, Texas, et al. C. A. 5th Cir. Certiorari denied. Reported below: 839 Fed. Appx. 898.

No. 20–1482. Melchione *v.* Temple. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 20–1491. Lasheen *v.* Supreme Court of Ohio. Sup. Ct. Ohio. Certiorari denied.

No. 20–1495. McIntyre *v.* McIntyre et al. Ct. Sp. App. Md. Certiorari denied. Reported below: 247 Md. App. 752.

No. 20–1496. Elatrache *v.* Jackson, Warden. C. A. 6th Cir. Certiorari denied.

No. 20–1505. Merchant et al. *v.* Mayorkas, Secretary of Homeland Security, et al. C. A. 1st Cir. Certiorari denied. Reported below: 988 F. 3d 8.

No. 20–1508. Pierson *v.* Hudson Insurance Co. et al. C. A. 9th Cir. Certiorari denied. Reported below: 839 Fed. Appx. 102.

No. 20–1510. Tafuto *v.* Donald J. Trump for President, Inc., et al. C. A. 2d Cir. Certiorari denied. Reported below: 827 Fed. Appx. 112.

No. 20–1514. Dodd *v.* Clarke, Director, Virginia Department of Corrections. Sup. Ct. Va. Certiorari denied.

No. 20–1515. Assad *v.* Wasmer, Warden, et al. C. A. 8th Cir. Certiorari denied.

No. 20–1525. Archer *v.* America's First Federal Credit Union. C. A. 11th Cir. Certiorari denied. Reported below: 845 Fed. Appx. 815.

No. 20–1535. Diaz *v.* Johnson. C. A. 1st Cir. Certiorari denied.

No. 20–1537. Dickinson *v.* HSBC Bank USA, N. A., et al. C. A. 9th Cir. Certiorari denied.

No. 20–1540. Edney *v.* Hines et al. C. A. 5th Cir. Certiorari denied. Reported below: 840 Fed. Appx. 766.

No. 20–1543. McNiece *v.* Town of Yankeetown, Florida, et al. C. A. 11th Cir. Certiorari denied. Reported below: 817 Fed. Appx. 842.

No. 20–1544. Ross *v.* Peregrine Health Services, Inc., et al. C. A. 6th Cir. Certiorari denied.

No. 20–1545. TCL Communication Technology Holdings Ltd. et al. *v.* Godo Kaisha IP Bridge 1. C. A. Fed. Cir. Certiorari denied. Reported below: 967 F. 3d 1380.

No. 20–1564. Perna *v.* Health One Credit Union et al. C. A. 6th Cir. Certiorari denied. Reported below: 983 F. 3d 258.

No. 20–1597. Conti *v.* Arrowood Indemnity Co. C. A. 6th Cir. Certiorari denied. Reported below: 982 F. 3d 445.

No. 20–1609. Seaton *v.* Johnson et al. Ct. App. D. C. Certiorari denied. Reported below: 248 A. 3d 112.

No. 20–1625. Lillie *v.* ManTech International Corp. C. A. 9th Cir. Certiorari denied. Reported below: 837 Fed. Appx. 455.

No. 20–1637. Dickinson *v.* Ryan Seacrest Productions, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 839 Fed. Appx. 110.

No. 20–1645. Collins *v.* Texas. Ct. App. Tex., 9th Dist. Certiorari denied. Reported below: 516 S. W. 3d 504.

No. 20–1656. Johnson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 831 Fed. Appx. 652.

No. 20–1663. Norwood *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 81 M. J. 12.

No. 20–1671. Ho *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 984 F. 3d 191.

No. 20–1680. ACI Information Group *v.* MidlevelU, Inc. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 3d 1205.

No. 20–6600. Smiley *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 819 Fed. Appx. 850.

No. 20–6948. Croghan *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 973 F. 3d 809.

No. 20–7160. Garrison *v.* Louisiana. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 19–62 (La. App. 5 Cir. 4/23/20), 297 So. 3d 190.

No. 20–7189. Thomas *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 827 Fed. Appx. 72.

No. 20–7210. Connell *v.* New York. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 185 App. Div. 3d 1048, 126 N. Y. S. 3d 372.

No. 20–7327. Ward *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 972 F. 3d 364.

No. 20–7460. Rodriguez Fernandez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 833 Fed. Appx. 803.

No. 20–7522. Jones *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 832 Fed. Appx. 929.

No. 20–7528. Figueroa-Serrano *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 971 F. 3d 806.

No. 20–7533. James *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 831 Fed. Appx. 578.

No. 20–7549. Arnold *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 836 Fed. Appx. 500.

No. 20–7611. Garrison *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 839 Fed. Appx. 968.

No. 20–7667. Kendrick *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 980 F. 3d 432.

No. 20–7815. Barbee *v.* Boyd et al. C. A. 8th Cir. Certiorari denied. Reported below: 815 Fed. Appx. 102.

No. 20–7823. Trowbridge *v.* Woods, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 835 Fed. Appx. 100.

No. 20–7827. Plourde *v.* Bellavia. Sup. Jud. Ct. Me. Certiorari denied.

No. 20–7828. Mitchell *v.* Shinn, Director, Arizona Department of Corrections, Rehabilitation and Reentry, et al. C. A. 9th Cir. Certiorari denied.

No. 20–7835. Cooper *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied.

No. 20–7841. Manor *v.* United of Omaha Life Insurance Co. C. A. 9th Cir. Certiorari denied. Reported below: 828 Fed. Appx. 404.

No. 20–7843. Johnson *v.* Baker, Warden. Sup. Ct. Nev. Certiorari denied. Reported below: 137 Nev. 928, 480 P. 3d 265.

No. 20–7844. Jolivette *v.* United States District Court for the Northern District of California. C. A. 9th Cir. Certiorari denied.

No. 20–7848. Davis *v.* Wilson, Individually and in His Official Capacity as Judge, Superior Court of California, Marin County, et al. C. A. 9th Cir. Certiorari denied.

No. 20–7859. Lee *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 834 Fed. Appx. 160.

No. 20–7865. Froman *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 162 Ohio St. 3d 435, 2020-Ohio-4523, 165 N. E. 3d 1198.

No. 20–7867. Groffel *v.* Virginia. Sup. Ct. Va. Certiorari denied. Reported below: 299 Va. 271, 849 S. E. 2d 905.

No. 20–7871. Walker *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 835 Fed. Appx. 524.

No. 20–7881. Oppel *v.* Minnesota. Ct. App. Minn. Certiorari denied.

No. 20–7908. King *v.* Saul, Commissioner of Social Security. C. A. 6th Cir. Certiorari denied.

No. 20–7919. West-El *v.* ONeal. C. A. 11th Cir. Certiorari denied.

No. 20–7926. El-Amin *v.* Louisiana. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 2020–1069 (La. App. 1 Cir. 12/30/20).

No. 20–7971. Rivera *v.* Horton, Warden. C. A. 6th Cir. Certiorari denied.

No. 20–7980. Bethea *v.* West Virginia. Sup. Ct. App. W. Va. Certiorari denied.

No. 20–7987. Clinton *v.* Riley. C. A. 4th Cir. Certiorari denied. Reported below: 832 Fed. Appx. 199.

No. 20–8017. Brenham *v.* Kemp et al. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 20–8057. Aigbekaen *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 943 F. 3d 713.

No. 20–8087. Erickson *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 20–8105. Littlepage *v.* First District Court of Appeals of Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 161 Ohio St. 3d 1414, 2021-Ohio-120, 161 N. E. 3d 703.

No. 20–8112. Jackson *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 20–8129. Miller *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 20–8132. Verkler *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 830 Fed. Appx. 889.

No. 20–8136. McAfee *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 831 Fed. Appx. 726.

No. 20–8137. McRae *v.* Harrison, Sheriff, Wake County, North Carolina. C. A. 4th Cir. Certiorari denied. Reported below: 833 Fed. Appx. 996.

No. 20–8138. Pena *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 846 Fed. Appx. 49.

No. 20–8146. Smith *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 983 F. 3d 1006.

No. 20–8152. Martinez-Figueroa *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 831 Fed. Appx. 739.

No. 20–8156. Renteria *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 839 Fed. Appx. 123.

No. 20–8160. Bontemps *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 977 F. 3d 909.

No. 20–8168. Colby *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 837 Fed. Appx. 587.

No. 20–8169. Jimenez *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 846 Fed. Appx. 53.

No. 20–8173. McLean *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 20–8174. Lemo *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 237 A. 3d 1050.

No. 20–8177. Brooks *v.* Agate Resources, Inc. C. A. 9th Cir. Certiorari denied. Reported below: 836 Fed. Appx. 471.

No. 20–8183. Sanganza *v.* Warden, Allenwood Federal Correctional Institution. C. A. 3d Cir. Certiorari denied. Reported below: 831 Fed. Appx. 603.

No. 20–8184. Centeno *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 831 Fed. Appx. 666.

No. 20–8186. Young et al. *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 3d 253.

No. 20–8189. Griffith *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 839 Fed. Appx. 920.

No. 20–8191. Hill *v.* Rivera, Warden. C. A. 8th Cir. Certiorari denied. Reported below: 982 F. 3d 1198.

No. 20–8192. Newball-May *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 846 Fed. Appx. 831.

No. 20–8194. Moreno *v.* Hendrix, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 842 Fed. Appx. 18.

No. 20–8209. Edwards *v.* Larson, Warden. C. A. 7th Cir. Certiorari denied.

No. 20–8212. Brandao *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 20–319. Comcast Corp. et al. *v.* Viamedia, Inc. C. A. 7th Cir. Certiorari denied. Justice Barrett took no part in the consideration or decision of this petition. Reported below: 951 F. 3d 429.

No. 20–645. Standing Akimbo, LLC, et al. *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 955 F. 3d 1146.

Statement of Justice Thomas respecting the denial of certiorari.

Sixteen years ago, this Court held that Congress' power to regulate interstate commerce authorized it "to prohibit the local cultivation and use of marijuana." *Gonzales* v. *Raich*, 545 U. S. 1, 5 (2005). The reason, the Court explained, was that Congress had "enacted comprehensive legislation to regulate the interstate market in a fungible commodity" and that "exemption[s]" for local use could undermine this "comprehensive" regime. *Id.*, at 22–29. The Court stressed that Congress had decided "to prohibit *entirely* the possession or use of [marijuana]" and had "designate[d] marijuana as contraband for *any* purpose." *Id.*, at 24–27 (first emphasis added). Prohibiting any intrastate use was thus, according to the Court, " 'necessary and proper' " to avoid a "gaping hole" in Congress' "closed regulatory system." *Id.*, at 13, 22 (citing U. S. Const., Art. I, § 8).

Whatever the merits of *Raich* when it was decided, federal policies of the past 16 years have greatly undermined its reasoning. Once comprehensive, the Federal Government's current approach is a half-in, half-out regime that simultaneously tolerates and forbids local use of marijuana. This contradictory and unstable state of affairs strains basic principles of federalism and conceals traps for the unwary.

This case is a prime example. Petitioners operate a medical-marijuana dispensary in Colorado, as state law permits. And, though federal law still flatly forbids the intrastate possession, cultivation, or distribution of marijuana, Controlled Substances Act, 84 Stat. 1242, 1247, 1260, 1264, 21 U. S. C. §§ 802(22), 812(c), 841(a), 844(a),[1] the Government, post-*Raich*, has sent mixed signals on its views. In 2009 and 2013, the Department of Justice issued memorandums outlining a policy against intruding on state legalization schemes or prosecuting certain individuals who comply with state law.[2] In 2009, Congress enabled Washington D. C.'s government to decriminalize medical marijuana under local ordinance.[3] Moreover, in every fiscal year since 2015, Congress has prohibited the Department of Justice from "spending funds to prevent states' implementation of their own medical marijuana laws." *United States* v. *McIntosh*, 833 F. 3d 1163, 1168, 1175–1177 (CA9 2016) (interpreting the rider to prevent expenditures

[1] A narrow exception to federal law exists for Government-approved research projects, but that exception does not apply here. 84 Stat. 1271, 21 U. S. C. § 872(e).

[2] See Memorandum from Dep. Atty. Gen. to Selected U. S. Attys., Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana (Oct. 19, 2009); Memorandum from Dep. Atty. Gen. to All U. S. Attys., Guidance Regarding Marijuana Enforcement (Aug. 29, 2013). In 2018, however, the Department of Justice rescinded those and three other memorandums related to federal marijuana laws. Memorandum from U. S. Atty. Gen. to All U. S. Attys., Marijuana Enforcement (Jan. 4, 2018). Despite that rescission, in 2019 the Attorney General stated that he was " 'accepting the [2013] Memorandum for now.' " Somerset, Attorney General Barr Favors a More Lenient Approach to Cannabis Prohibition, Forbes, Apr. 15, 2019.

[3] See Congress Lifts Ban on Medical Marijuana for Nation's Capitol, Americans for Safe Access, Dec. 13, 2009.

on the prosecution of individuals who comply with state law).[4] That policy has broad ramifications given that 36 States allow medicinal marijuana use and 18 of those States also allow recreational use.[5]

Given all these developments, one can certainly understand why an ordinary person might think that the Federal Government has retreated from its once-absolute ban on marijuana. See, *e. g.*, Halper, Congress Quietly Ends Federal Government's Ban on Medical Marijuana, L. A. Times, Dec. 16, 2014. One can also perhaps understand why business owners in Colorado, like petitioners, may think that their intrastate marijuana operations will be treated like any other enterprise that is legal under state law.

Yet, as petitioners recently discovered, legality under state law and the absence of federal criminal enforcement do not ensure equal treatment. At issue here is a provision of the Tax Code that allows most businesses to calculate their taxable income by subtracting from their gross revenue the cost of goods sold *and* other ordinary and necessary business expenses, such as rent and employee salaries. See 26 U. S. C. § 162(a); 26 CFR § 1.61–3(a) (2020). But because of a public-policy provision in the Tax Code, companies that deal in controlled substances prohibited by federal law may subtract only the cost of goods sold, not the other ordinary and necessary business expenses. See 26 U. S. C. § 280E. Under this rule, a business that is still in the red after it pays its workers and keeps the lights on might nonetheless owe substantial federal income tax.

As things currently stand, the Internal Revenue Service is investigating whether petitioners deducted business expenses in violation of § 280E, and petitioners are trying to prevent disclo-

[4] Despite the Federal Government's recent pro-marijuana actions, the Attorney General has declined to use his authority to reschedule marijuana to permit legal, medicinal use. *E. g., Krumm* v. *Holder*, 594 Fed. Appx. 497, 498–499 (CA10 2014) (citing § 811(a)); Denial of Petition to Initiate Proceedings to Reschedule Marijuana, 81 Fed. Reg. 53688 (2016).

[5] Hartman, Cannabis Overview, Nat. Conference of State Legislatures (June 22, 2021), https://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx. The state recreational use number does not include South Dakota, where a state court overturned a ballot measure legalizing marijuana. *Ibid.*

sure of relevant records held by the State.[6] In other words, petitioners have found that the Government's willingness to often look the other way on marijuana is more episodic than coherent.

This disjuncture between the Government's recent laissez-faire policies on marijuana and the actual operation of specific laws is not limited to the tax context. Many marijuana-related businesses operate entirely in cash because federal law prohibits certain financial institutions from knowingly accepting deposits from or providing other bank services to businesses that violate federal law. Black & Galeazzi, Cannabis Banking: Proceed With Caution, American Bar Assn., Feb. 6, 2020. Cash-based operations are understandably enticing to burglars and robbers. But, if marijuana-related businesses, in recognition of this, hire armed guards for protection, the owners and the guards might run afoul of a federal law that imposes harsh penalties for using a firearm in furtherance of a "drug trafficking crime." 18 U. S. C. § 924(c)(1)(A). A marijuana user similarly can find himself a federal felon if he just possesses a firearm. § 922(g)(3). Or petitioners and similar businesses may find themselves on the wrong side of a civil suit under the Racketeer Influenced and Corrupt Organizations Act. See, *e. g., Safe Streets Alliance* v. *Hickenlooper*, 859 F. 3d 865, 876–877 (CA10 2017) (permitting such a suit to proceed).

I could go on. Suffice it to say, the Federal Government's current approach to marijuana bears little resemblance to the watertight nationwide prohibition that a closely divided Court found necessary to justify the Government's blanket prohibition in *Raich*. If the Government is now content to allow States to act "as laboratories" "'and try novel social and economic experiments,'" *Raich*, 545 U. S., at 42 (O'Connor, J., dissenting), then it

[6] In their petition for a writ of certiorari, petitioners contend that the lack of a deduction for ordinary business expenses causes the tax to fall outside the Sixteenth Amendment's authorization of "taxes on incomes." Therefore, they contend the tax is unconstitutional. That argument implicates several difficult questions, including the differences between "direct" and "indirect" taxes and how to interpret the Sixteenth Amendment. Cf. *National Federation of Independent Business* v. *Sebelius*, 567 U. S. 519, 570–571 (2012); *Taft* v. *Bowers*, 278 U. S. 470, 481–482 (1929). In light of the still-developing nature of the dispute below, I agree with the Court's decision not to delve into these questions.

might no longer have authority to intrude on "[t]he States' core police powers . . . to define criminal law and to protect the health, safety, and welfare of their citizens." *Ibid.* A prohibition on intrastate use or cultivation of marijuana may no longer be necessary *or* proper to support the Federal Government's piecemeal approach.

No. 20–1043. UNITED STATES *v.* ANGEL CANO. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 934 F. 3d 1002.

No. 20–1138. CIMZNHCA, LLC *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE BARRETT took no part in the consideration or decision of this petition. Reported below: 970 F. 3d 835.

No. 20–1163. GLOUCESTER COUNTY SCHOOL BOARD *v.* GRIMM. C. A. 4th Cir. Certiorari denied. JUSTICE THOMAS and JUSTICE ALITO would grant the petition for writ of certiorari. Reported below: 972 F. 3d 586.

No. 20–1675. PHILLIPS, INDIVIDUALLY AND AS TRUSTEE FOR PHILLIPS ET AL. *v.* ONEIDA INDIAN NATION. C. A. 2d Cir. Motion of Congressperson Claudia Tenney for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 981 F. 3d 157.

No. 20–6199. TOWNLEY HERNANDEZ *v.* PEERY, WARDEN. C. A. 9th Cir. Certiorari denied.

JUSTICE SOTOMAYOR, dissenting.

Petitioner Jacob Townley Hernandez's former codefendant became a key prosecution witness at Townley's trial.[1] The trial court, however, forbade Townley's attorney from speaking with his client about the existence or contents of a declaration executed by that witness. Although the State does not dispute that this order unjustifiably interfered with Townley's constitutional right to consult with his counsel, the California Supreme Court held that reversal of Townley's convictions would be appropriate only if he could demonstrate prejudice. Townley challenged that decision in federal habeas proceedings, but the District Court denied

[1] Like the petition for certiorari and the courts below, I refer to petitioner as "Townley."

his petition. The U. S. Court of Appeals for the Ninth Circuit then refused to issue a certificate of appealability (COA). That was error. Because reasonable jurists could debate whether the District Court should have granted habeas relief on Townley's Sixth Amendment claim, the Ninth Circuit should have authorized an appeal. I would grant the petition for a writ of certiorari and summarily reverse the order of the Ninth Circuit denying a COA.

I

In 2006, a group of young men shot (but did not kill) Javier Lazaro. Seventeen-year-old Townley and three accomplices were subsequently charged with attempted murder. Two of those accomplices, including Noe Flores, pleaded to reduced charges in exchange for executing declarations that detailed the shooting. To protect Flores from possible retaliation, the trial court sealed the declaration and ordered that it could be opened only if the prosecution called Flores to testify.

Flores was, in fact, called to testify at Townley's trial. Although Townley's defense counsel was given copies of Flores' declaration, he was "unsuccessful in moving to withdraw the order not to discuss the contents or existence of the document with [Townley]." *People* v. *Hernandez*, 101 Cal. Rptr. 3d 414, 422 (App. 2009) (officially depublished). As a result, the trial court "prohibited counsel from sharing the statemen[t] with [Townley], investigators, or other attorneys and further ordered that the statemen[t] be used solely 'for purposes of cross-examination.'" *People* v. *Hernandez*, 53 Cal. 4th 1095, 1101, 273 P. 3d 1113, 1115 (2012).

Townley was convicted of attempted premeditated murder, with enhancements for personal use of a firearm and infliction of great bodily harm. He was sentenced to consecutive sentences of life in prison and 25 years to life.

The California Court of Appeal reversed. Relying on this Court's decision in *Geders* v. *United States*, 425 U. S. 80 (1976), the Court of Appeal explained that "when the government unjustifiably interferes with attorney-client communication, the result may be determined to be a violation of a criminal defendant's constitutional 'right to the assistance of counsel.'" *Hernandez*, 101 Cal. Rptr. 3d, at 423 (quoting *Geders*, 425 U. S., at 91). The court assumed that "'a carefully tailored, limited restriction on the defendant's right to consult counsel is permissible'" when necessary "'to protect a countervailing interest,'" such as witness safety. *Hernandez*, 101 Cal. Rptr. 3d, at 430–431. But "[e]ven under this test, the challenged order exhibit[ed] fatal defects." *Id.*, at 431. For one, "there was no express finding or showing of . . . good cause." *Ibid.* For another, the order "was not carefully tailored to serve the objective of keeping 'paperwork' out of the hands of prison gangs." *Ibid.* Instead, it "appear[ed] to have been tailored to allow the prosecution to produce trial testimony that was a surprise to Townley" and "to impede counsel's investigation of the accuracy of the declaration." *Ibid.* The court thus concluded that the trial court's order "unjustifiably infringed on Townley's constitutional right to the effective assistance of counsel." *Id.*, at 432. Then, relying on this Court's "clear holding" in *Perry* v. *Leeke*, 488 U. S. 272 (1989), that "'a showing of prejudice is not an essential component of a violation of the rule announced in *Geders*,'" the Court of Appeal held that reversal was necessary regardless of whether Townley could demonstrate prejudice. *Hernandez*, 101 Cal. Rptr. 3d, at 432 (quoting *Perry*, 488 U. S., at 278–279).

On appeal to the California Supreme Court, the State conceded that the trial court's order "unjustifiably interfered with Townley's access to his attorney." *Hernandez*, 53 Cal. 4th, at 1102, and n. 2, 273 P. 3d, at 1116, and n. 2. The sole issue, therefore, was "whether the deprivation of [Townley's] right to consult with his attorney about the Flores declaration was structural error," *i. e.*, an error for which no prejudice inquiry is necessary. Brief in Opposition 5. The court concluded that the deprivation was not structural error. The circumstances of Townley's case were not "comparable in magnitude to those presented in *Geders*," the court reasoned, because defense counsel did not "*entirely* fai[l] to subject the prosecution's case to meaningful adversarial testing." *Hernandez*, 53 Cal. 4th, at 1106, 273 P. 3d, at 1119 (citing *United States* v. *Cronic*, 466 U. S. 648, 659 (1984); internal quotation marks omitted). The court thus reversed and remanded the case for the Court of Appeal to determine whether, "in accordance with the standard stated in" *Strickland* v. *Washington*, 466 U. S. 668 (1984), "there is a reasonable probability that, but for the error, the result of the trial would have been different." *Hernandez*, 53 Cal. 4th, at 1111, 273 P. 3d, at 1122. On remand, the Court of Appeal found that Townley failed to demonstrate prejudice, and it affirmed his convictions. See *People* v. *Hernandez*, 2013 WL 3939441, *1 (Cal. Ct. App., July 29, 2013).

Townley filed a *pro se* petition for a writ of habeas corpus in federal court under 28 U. S. C. § 2254. Because the State again "conceded error," the question before the District Court was limited to whether "the California Supreme Court's holding that [the] trial court's order was not structural error—and prejudice had to be shown—was contrary to or an unreasonable application of federal law within the meaning of 28 U. S. C. § 2254(d)(1)." 2018 WL 11251904, *4–*5 (ND Cal., Dec. 18, 2018). The District Court concluded it was not, reasoning that "[t]he Supreme Court has never held that a limited restriction . . . on the matters that defense counsel could discuss with his client amounts to structural error." *Id.*, at *5.

Townley sought permission to appeal. The Ninth Circuit denied Townley's request for a COA in a one-page order. See App. to Pet. for Cert. 2 (denying a COA because Townley "has not made a 'substantial showing of the denial of a constitutional right' " (quoting 28 U. S. C. § 2253(c)(2))). Townley then petitioned for review in this Court.

II

A habeas petitioner may not appeal the denial of his habeas petition unless the District Court or Court of Appeals "issues a certificate of appealability." 28 U. S. C. § 2253(c)(1); see also *Gonzalez* v. *Thaler*, 565 U. S. 134, 143, n. 5 (2012). Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), a COA "may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." § 2253(c)(2). To make that showing, a habeas petitioner must demonstrate "that reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack* v. *McDaniel*, 529 U. S. 473, 484 (2000) (internal quotation marks omitted). AEDPA does not "require petitioner[s] to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus." *Miller-El* v. *Cockrell*, 537 U. S. 322, 338 (2003). Rather, "[a]t the COA stage, the only question is whether" the "claim is reasonably debatable." *Buck* v. *Davis*, 580 U. S. 100, 115, 117 (2017).

In this case, the issue confronting the Ninth Circuit was whether reasonable jurists could debate the District Court's disposition of Townley's habeas petition. That question, in turn, depends on whether reasonable jurists could argue that the California Supreme Court's decision contravened or unreasonably applied clearly established federal law. They certainly could.

This Court has decided two cases involving court-ordered interferences with attorney-client communication: *Geders* v. *United States* and *Perry* v. *Leeke*. In *Geders*, the Court held that a defendant's Sixth Amendment right to counsel was violated when the trial court prohibited him from speaking with his attorney during an overnight recess that interrupted his testimony. 425 U. S., at 91. The Court acknowledged that the trial judge had "sequestered all witnesses" and, "before each recess," had "instructed the testifying witness not to discuss his testimony with anyone." *Id.*, at 87–88. "But the petitioner was not simply a witness; he was also the defendant," and "a defendant in a criminal case must often consult with his attorney during the trial." *Id.*, at 88. The Court thus held that the "sustained barrier to communication between [the] defendant and his lawyer" unconstitutionally "impinged upon [the defendant's] right to the assistance of counsel guaranteed by the Sixth Amendment." *Id.*, at 91. The Court reversed the defendant's conviction. *Ibid.*

Later, in *Perry*, the Court considered "whether the *Geders* rule applie[d]" to an order directing a defendant not to consult with his attorney during a 15-minute recess in the middle of the defendant's testimony. 488 U. S., at 274. The court below had declined to reverse the defendant's conviction "because the error was not prejudicial." *Id.*, at 276. *Perry* soundly rejected that reasoning. The Court observed that, "consistent with . . . the fundamental importance of the criminal defendant's constitutional right to be represented by counsel," *Geders* had "simply reversed the defendant's conviction without pausing to consider the extent of the actual prejudice."[2] 488 U. S., at 279.

Taken together, *Geders* and *Perry* require automatic reversal whenever a court unjustifiably denies a defendant access to counsel during trial. Here, the State concedes that Townley was wrongly deprived of his right to consult with his counsel about a significant witness declaration before and during that witness'

[2] *Perry* ultimately affirmed the lower court on the ground that the defendant did not have "a constitutional right to confer with his attorney during the 15-minute break in his testimony." 488 U. S., at 280. Although a defendant "has an absolute right to . . . consultation [with his lawyer] before he begins to testify," he has no "constitutional right to discuss that testimony while it is in process." *Id.*, at 281, 284.

testimony. See Brief in Opposition 5; 2018 WL 11251904, *4. That concession is well founded, as (save for a few exceptions not relevant here) a defendant's "right to consult with his lawyer" is "absolute" and "unrestricted." *Perry,* 488 U. S., at 281, 284. In defending the California Supreme Court's decision, therefore, the State must maintain that some court-ordered interferences with the Sixth Amendment right to counsel are constitutionally tolerable if the defendant fails to demonstrate "a reasonable probability that, but for the error, the result of the trial would have been different." *Hernandez*, 53 Cal. 4th, at 1111, 273 P. 3d, at 1122 (citing *Strickland*, 466 U. S., at 686–687). Reasonable jurists could conclude, however, that such an argument contravenes *Geders* (and, by extension, *Perry*), in which the Court "simply reversed the defendant's conviction without pausing to consider the extent of actual prejudice." *Perry,* 488 U. S., at 279. Tellingly, neither the California Supreme Court, nor the District Court, nor the State in its brief before this Court has cited a single case in which a court identified an access-to-counsel error but still required the defendant to demonstrate prejudice.

In declining to apply the automatic-reversal rule adopted in *Geders* and *Perry,* the California Supreme Court relied heavily on *Strickland* v. *Washington* and *United States* v. *Cronic*. But neither case can bear the weight the California Supreme Court assigned to it. *Strickland*, for its part, requires a showing of prejudice where the defendant raises "a claim of 'actual ineffectiveness' of counsel's assistance," *i. e.,* a case in which counsel allegedly "deprive[d] a defendant of the right to effective assistance, simply by failing to render 'adequate legal assistance.'" 466 U. S., at 683, 686. *Strickland* does not address Sixth Amendment claims based on "state interference with counsel's assistance," for which "prejudice is presumed." *Id.*, at 692. This Court recognized that distinction in *Perry,* where it explained that *Strickland* "expressly noted that direct governmental interference with the right to counsel is a different matter" from "the standard for measuring the quality of the lawyer's work." 488 U. S., at 279. Indeed, *Strickland* cited *Geders* for the proposition that the "[g]overnment violates the right to effective assistance when it interferes in certain ways with the ability of counsel to make independent decisions about how to conduct the defense." *Strickland*, 466 U. S., at 686 (citing *Geders*, 425 U. S. 80). The same is true for *Cronic* (decided the same day as *Strickland*), which also cited *Geders* in observing that "[t]he Court has uniformly found constitutional error without any showing of prejudice when counsel was . . . prevented from assisting the accused during a critical stage of the proceeding." *Cronic*, 466 U. S., at 659, n. 25.

Finally, even if no reasonable jurist would question the California Supreme Court's dubious assumption that *Strickland*'s actual-prejudice standard applies to some subset of access-to-counsel errors, they could still debate whether the California Supreme Court reasonably placed Townley's case within that category. The California Supreme Court rejected Townley's request for automatic reversal based on its determination that, because the trial court's order "at most prevented defense counsel from fully discussing the anticipated testimony of a single prosecution witness," "the circumstances present" in Townley's case "are not comparable in magnitude to those in *Geders*." *Hernandez*, 53 Cal. 4th, at 1108–1109, 273 P. 3d, at 1120–1121 (citing *Geders*, 425 U. S. 80, and *Cronic*, 466 U. S., at 659, n. 25). But reasonable jurists would rightly wonder why, if the 17-hour bar on communication at issue in *Geders* would prevent an attorney from "perform[ing] the essential functions of trial counsel," *Hernandez*, 53 Cal. 4th, at 1109, 273 P. 3d, at 1121, a total prohibition on discussing a crucial document at all relevant times would not do the same. After all, although "only a small number of discrete documents were off-limits for discussion between [Townley] and his attorney," 2018 WL 11251904, *5, those documents pertained to a witness who the California Supreme Court recognized was "key to the prosecution," *Hernandez*, 53 Cal. 4th, at 1109, 273 P. 3d, at 1121; see also *Hernandez*, 101 Cal. Rptr. 3d, at 433 (describing the witness as "significant").

In the end, regardless of how the Ninth Circuit would resolve Townley's appeal on the merits, it is beyond question that Townley's claim is, at minimum, "reasonably debatable." *Buck*, 580 U. S., at 117. The Ninth Circuit erred in denying Townley a COA, and this Court should not allow that error to go uncorrected. I respectfully dissent.

No. 20–7474. Kelley *v.* United States. C. A. 9th Cir. Motion of Americans for Prosperity Foundation et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 962 F. 3d 470.

No. 20–7875. Truong *v.* UTC Aerospace Systems. C. A. 8th Cir. Certiorari denied. Justice Alito took no part in the consideration or decision of this petition. Reported below: 831 Fed. Appx. 229.

Rehearing Denied

No. 18–8621. Ingram *v.* Prelesnik, Warden, 587 U. S. 1030;

No. 20–1194. Lopez *v.* Corona Police Department et al., 593 U. S. 974; and

No. 20–6767. Thomas *v.* Illinois, 592 U. S. 1311. Petitions for rehearing denied.

No. 20–6929. Hugueley *v.* Mays, Warden, 592 U. S. 1354. Motion leave to file petition for rehearing denied.

No. 20–7170. In re Prasad, 593 U. S. 926. Petition for rehearing denied. Justice Breyer took no part in the consideration or decision of this petition.

June 29, 2021

Miscellaneous Orders

No. 20A169. Alabama Association of Realtors et al. *v.* Department of Health and Human Services et al. D. C. D. C. Application to vacate stay, presented to The Chief Justice, and by him referred to the Court, denied. Justice Thomas, Justice Alito, Justice Gorsuch, and Justice Barrett would grant the application.

Justice Kavanaugh, concurring.

I agree with the District Court and the applicants that the Centers for Disease Control and Prevention exceeded its existing statutory authority by issuing a nationwide eviction moratorium. See *Utility Air Regulatory Group* v. *EPA*, 573 U. S. 302, 324 (2014). Because the CDC plans to end the moratorium in only a few weeks, on July 31, and because those few weeks will allow for additional and more orderly distribution of the congressionally appropriated rental assistance funds, I vote at this time to deny the application to vacate the District Court's stay of its order. See *Barnes* v. *E-Systems, Inc. Group Hospital Medical & Surgical Ins. Plan*, 501 U. S. 1301, 1305 (1991) (Scalia, J., in chambers) (stay depends in part on balance of equities); *Coleman* v. *Paccar Inc.*, 424 U. S. 1301, 1304 (1976) (Rehnquist, J., in chambers). In my view, clear and specific congressional authorization (via new legislation) would be necessary for the CDC to extend the moratorium past July 31.

No. 20–979. Patel et al. *v.* Garland, Attorney General. C. A. 11th Cir. [Certiorari granted, 594 U. S. 925.] Taylor A. R. Meehan, Esq. of Chicago, Ill., is invited to brief and argue this case as *amicus curiae* in support of judgment below.

July 2, 2021

Certiorari Granted—Reversed and Remanded. (See *Dunn* v. *Reeves*, 594 U. S. 731 (2021) (*per curiam*).)

Certiorari Granted—Vacated and Remanded

No. 19–793. Institute for Free Speech *v.* Bonta, Attorney General of California. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Americans for Prosperity Foundation* v. *Bonta*, 594 U. S. 595 (2021).

No. 20–7028. Mast et al. *v.* Fillmore County, Minnesota, et al. Ct. App. Minn. Motion of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Fulton* v. *Philadelphia*, 593 U. S. 522 (2021).

Justice Alito, concurring in judgment.

I agree that we should vacate the judgment below and remand for further consideration. The lower court plainly misinterpreted and misapplied the Religious Land Use and Institutionalized Persons Act.

Justice Gorsuch, concurring.

The Swartzentruber Amish are religiously committed to living separately from the modern world. Maintaining that commitment is not easy. They grow their own food, tend their farms using pre-industrial equipment, and make their own clothes. In short, they lead lives of faith and self-reliance that have "not altered in fundamentals for centuries." *Wisconsin* v. *Yoder*, 406 U. S. 205, 216–217 (1972).

In this long-running litigation, officials in Fillmore County, Minnesota have insisted that the Amish must adopt certain modern technologies or risk jail, fines, and even losing their farms. Today, the Court grants the Amish's petition for review, vacates the lower court's decisions, and remands this case for further proceedings in light of our recent decision in *Fulton* v. *Philadelphia*, 593 U. S. 522 (2021). I support this decision and write to highlight a few issues the lower courts and administrative authorities may wish to consider on remand.

*

Each Amish community has its own body of religious rules, called an *Ordnung*. When a community must decide whether its faith permits a certain action—say, using the phone at a neighbor's farm should a fire break out—it makes that decision collectively. Sometimes there are disagreements and communities fracture. Over time, this phenomenon has led to approximately 40 different affiliations within the broader Amish community across the United States. The Swartzentruber Amish are among the most traditional.

Today's dispute is about plumbing, specifically the disposal of gray water—water used in dishwashing, laundry, and the like. The Swartzentruber Amish do not have running water in their homes, at least as most would understand it. Water arrives through a single line and is either pumped by hand or delivered by gravity from an external cistern.

In 2013, Fillmore County adopted an ordinance requiring most homes to have a modern septic system for the disposal of gray water. See App. to Pet. for Cert. 3; Minn. Stat. § 115.55(2)(a) (2020); Minn. Admin. Rules 7080.1050–7080.2550 (2019); Fillmore County, Sub-Surface Sewage Treatment System Ordinance §§ 501–502 (2013). Responding to this development, the Swartzentruber Amish submitted a letter explaining that their religion forbids the use of such technology and " 'asking in the name of our Lord to be exempt' " from the new rule. App. to Brief in Opposition for Respondent Minnesota Pollution Control Agency 78 (MPCA App.). Instead of accommodating this request or devising a solution that respected the Amish's faith, the Minnesota Pollution Control Agency filed an administrative enforcement action against 23 Amish families in Fillmore County demanding the installation of modern septic systems under pain of criminal penalties and civil fines. *Id.*, at 79.

Faced with this action, the Amish filed their own declaratory judgment suit in state court against Fillmore County and the Minnesota Pollution Control Agency (collectively, the County), alleging that the County's septic-system mandate violated the federal Religious Land Use and Institutionalized Persons Act (RLUIPA). But the Amish also offered an alternative. They offered to install systems that clean gray water in large earthen basins filled with wood chips that filter water as it drains. These wood chip basins may be more primitive than modern septic systems, but other jurisdictions permit their use for the disposal of gray water. See App. to Pet. for Cert. 4; *id.*, at 73–74.

Evidently, none of this pleased the authorities. The County replied by filing a counterclaim seeking an order displacing the Amish from their homes, removing all their possessions, and declaring their homes uninhabitable if the Amish did not install septic systems within six months. MPCA App. 80. The County even unsuccessfully sought a court order authorizing its agents to inspect the inside of Amish homes as part of an investigation into what "types of modern technologies and materials" they might be using. *Id.*, at 81. Apparently, this was part of an effort to amass "evidence" to "attack the sincerity of [the Amish's] religious beliefs." *Ibid.*, n. 5.

Eventually, the case proceeded to trial. There, the state trial court rejected the County's most aggressive arguments, including (1) its claim that the Amish's "limited use of telephones" proved that their objection to modern septic systems was contrived, App. to Pet. for Cert. 43; (2) its argument that the Bible commands the Amish to submit to "secular authority," *id.*, at 44, n. 16; and (3) its assertion that installing septic systems represented only a *de minimis* burden on the Amish's religious beliefs because they sometimes "use various items of 'modern' technology," such as "some rubber tires" or "power tools," *id.*, at 50. At the same time, however, the trial court sided with the County on the merits, requiring the Amish to install modern septic systems. The Minnesota Court of Appeals affirmed and the Minnesota Supreme Court denied review. *Id.*, at 2, 76.

*

Fulton makes clear that the County and courts below misapprehended RLUIPA's demands. That statute requires the application of "strict scrutiny." Under that form of review, the government bears the burden of proving both that its regulations serve a "compelling" governmental interest—and that its regulations are "narrowly tailored." *Fulton*, 593 U. S., at 541; 42 U. S. C. § 2000cc(a)(1) ("No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person . . . unless the government demonstrates that imposition of the burden . . . is in furtherance of a compelling government interest; and is the least restrictive means of furthering that compelling governmental interest").

Perhaps most notably, the County and courts below erred by treating the County's *general* interest in sanitation regulations as "compelling" without reference to the *specific* application of those rules to *this* community. As *Fulton* explains, strict scrutiny demands "a more precise analysis." 593 U. S., at 541. Courts cannot "rely on 'broadly formulated'" governmental interests, but must "'scrutinize[ ] the asserted harm of granting specific exemptions to particular religious claimants.'" *Ibid.* (quoting *Gonzales* v. *O Centro Espírita Beneficente União do Vegetal*, 546 U. S. 418, 431 (2006)). Accordingly, the question in this case "is not whether the [County] has a compelling interest in enforcing its [septic system requirement] *generally*, but whether it has such an interest in denying an exception" from that requirement to the Swartzentruber Amish *specifically*. *Fulton*, 593 U. S., at 541 (emphasis added); see also *Holt* v. *Hobbs*, 574 U. S. 352, 362–363 (2015) (RLUIPA requires courts to "scrutiniz[e] the asserted harm of granting specific exemptions to *particular* religious claimants" (internal quotation marks omitted; emphasis added)).*

Separately, the County and lower courts erred by failing to give due weight to exemptions other groups enjoy. For example,

*Before this Court, the County argues chiefly that the Amish forfeited this aspect of the law's protections by failing to press it sufficiently below. That is incorrect. The Amish asked the Minnesota Supreme Court to review whether the County had proved the absence of any "alternative means for adequately disposing of household gray water that is less restrictive on *Petitioners'* freedom to exercise their religious beliefs." MPCA App. 41 (boldface omitted; emphasis added). And they argued in the Minnesota Court of Appeals that "RLUIPA requires the court to scrutiniz[e] the asserted harm of granting specific exemptions to particular religious claimants." *Id.*, at 112 (internal quotation marks omitted). In any event, this Court has now vacated and remanded the decisions below, affording the County and courts below alike another opportunity to consider this issue.

in Minnesota those who "hand-carr[y]" their gray water are allowed to discharge it onto the land directly. Minn. Admin. Rule 7080.1500, § 2. So thousands of campers, hunters, fishermen, and owners and renters of rustic cabins are exempt from the septic system mandate. Under strict scrutiny doctrine, the County must offer a compelling explanation why the same flexibility extended to others cannot be extended to the Amish. As *Fulton* put it, the government must offer a "compelling reason why it has a particular interest in denying an exception to [a religious claimant] while making [exceptions] available to others." 593 U. S., at 542. Or as this Court has said elsewhere, it is "established in our strict scrutiny jurisprudence that a law cannot be regarded as protecting an interest of the highest order when it leaves appreciable damage to that supposedly vital interest unprohibited." *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520, 547 (1993) (internal quotation marks and alteration omitted); see also *Holt*, 574 U. S., at 367 ("[T]he Department has not adequately demonstrated why its grooming policy is substantially underinclusive"); *O Centro Espírita*, 546 U. S., at 436 ("The Government's argument echoes the classic rejoinder of bureaucrats throughout history: If I make an exception for you, I'll have to make one for everybody, so no exceptions").

Relatedly, the County and lower courts failed to give sufficient weight to rules in other jurisdictions. Governments in Montana, Wyoming, and other States allow for the disposal of gray water using mulch basins of the sort the Amish have offered to employ. App. to Pet. for Cert. 73–74. Given that, the County in this case bore the burden of presenting a "compelling reason why" it cannot offer the Amish this same alternative. *Fulton*, 593 U. S., at 542. To be sure, the County stresses the fact that the "record contains no evidence of a single, properly working mulch basin system in Minnesota." App. to Pet. for Cert. 74. But that is not enough. It is the government's burden to show this alternative won't work; not the Amish's to show it will. "[S]o long as the government can achieve its interests in a manner that does not burden religion, it must do so." *Fulton*, 593 U. S., at 541.

Finally, despite acknowledging that mulch basins could "theoretically" work, the County and lower courts rejected this alternative based on certain assumptions. They assumed that suitable sites for mulch basins could not be found on the Amish's farms—and that maintaining the basins would prove too much work.

See, *e. g.,* App. to Pet. for Cert. 67 ("It is questionable whether one could even find sites on the Plaintiffs' farms in Fillmore County that would" satisfy the technical requirements for an effective mulch system); *ibid.* ("[S]ites that would satisfy that requirement may simply not be available to the Plaintiffs"); *id.,* at 68 ("[T]he maintenance required to keep such a system properly operating would be so burdensome as to render it unfeasible"); *ibid.* ("[I]n Dr. Heger's opinion, this maintenance requirement makes the mulch basin concept unworkably labor intensive"); *id.,* at 69 ("'I don't think it's practical'"). But strict scrutiny demands more than supposition. The County must prove with evidence that its rules are narrowly tailored to advance a compelling state interest with respect to the specific persons it seeks to regulate. Here, that means proving that mulch basins will not work on these particular farms with these particular claimants. Again, if "the government can achieve its interests in a manner that does not burden religion, *it must do so.*" *Fulton,* 593 U. S., at 541 (emphasis added); see also *Tandon* v. *Newsom,* 593 U. S. 61, 64 (2021) (*per curiam*) ("The State cannot 'assume the worst when people go to worship but assume the best when people go to work'" (quoting *Roberts* v. *Neace,* 958 F. 3d 409, 414 (CA6 2020) (*per curiam*))).

*

RLUIPA prohibits governments from infringing sincerely held religious beliefs and practices except as a last resort. Despite that clear command, this dispute has staggered on in various forms for over six years. County officials have subjected the Amish to threats of reprisals and inspections of their homes and farms. They have attacked the sincerity of the Amish's faith. And they have displayed precisely the sort of bureaucratic inflexibility RLUIPA was designed to prevent. Now that this Court has vacated the decision below, I hope the lower courts and local authorities will take advantage of this "opportunity for further consideration," *Lawrence* v. *Chater,* 516 U. S. 163, 167 (1996) (*per curiam*), and bring this matter to a swift conclusion. In this country, neither the Amish nor anyone else should have to choose between their farms and their faith.

Vacated and Remanded After Certiorari 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 vacate the judgment granted. Judgment vacated, and case remanded to the United States Court of Appeals for the District of Columbia Circuit with instructions to direct the District Court to vacate the October 25, 2019, order granting the application of the Committee on the Judiciary, United States House of Representatives. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950).

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 vacate the judgments granted. Judgments vacated, and case remanded to the Court of Appeals with instructions to direct the District Court to vacate its judgments. The District Court should consider what further proceeding are necessary and appropriate in light of the changed circumstances in this case.

Miscellaneous Order

No. 143, Orig. Mississippi *v.* Tennessee et al. Exceptions to the Special Master Report are set for oral argument in due course. [For earlier order herein, see, *e. g.,* 592 U. S. 1121.]

Certiorari Granted

No. 20–219. Cummings *v.* Premier Rehab Keller, P. L. L. C. C. A. 5th Cir. Certiorari granted. Reported below: 948 F. 3d 673.

No. 20–1088. Carson, as Parent and Next Friend of O. C., et al. *v.* Makin. C. A. 1st Cir. Certiorari granted. Reported below: 979 F. 3d 21.

No. 20–1263. Gallardo, an Incapacitated Person, By and Through Her Parents and Co-Guardians Vassallo et al. *v.* Marstiller, Secretary of the Florida Agency for Health Care Administration. C. A. 11th Cir. Certiorari granted. Reported below: 963 F. 3d 1167.

No. 20–1312. Becerra, Secretary of Health and Human Services *v.* Empire Health Foundation, for Valley Hospital Medical Center. C. A. 9th Cir. Certiorari granted. Reported below: 958 F. 3d 873.

No. 20–1541. Pivotal Software, Inc., et al. *v.* Superior Court of California, City and County of San Francisco, et al. Ct. App. Cal., 1st App. Dist., Div. 5. Certiorari granted.

No. 19–1401. Hughes et al. *v.* Northwestern University et al. C. A. 7th Cir. Certiorari granted. Justice Barrett took no part in the consideration or decision of this petition. Reported below: 953 F. 3d 980.

No. 20–1114. American Hospital Assn. et al. *v.* Becerra, Secretary of Health and Human Services, et al. C. A. D. C. Cir. Certiorari granted. In addition to the question presented by the petition, the parties are directed to brief and argue the following question: "Whether petitioners' suit challenging HHS' adjustments is precluded by 42 U. S. C. § 13951(t)(12)." Reported below: 967 F. 3d 818.

No. 20–1374. CVS Pharmacy, Inc., et al. *v.* Doe et al. C. A. 9th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 982 F. 3d 1204.

No. 20–1459. United States *v.* Taylor. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 979 F. 3d 203.

Certiorari Denied

No. 20–1486. Empire Health Foundation, for Valley Hospital Medical Center *v.* Becerra, Secretary of Health and Human Services. C. A. 9th Cir. Certiorari denied. Reported below: 958 F. 3d 873.

No. 19–333. Arlene's Flowers, Inc., dba Arlene's Flowers and Gifts, et al. *v.* Washington et al. Sup. Ct. Wash. Certiorari denied. Justice Thomas, Justice Alito, and Justice Gorsuch would grant the petition for writ of certiorari. Reported below: 193 Wash. 2d 469, 441 P. 3d 1203.

No. 20–298. El Paso County, Texas, et al. *v.* Biden, President of the United States, et al. C. A. 5th Cir. Certiorari before judgment denied.

No. 20–1063. Berisha *v.* Lawson et al. C. A. 11th Cir. Certiorari denied. Reported below: 973 F. 3d 1304.

JUSTICE THOMAS, dissenting.

In 2015, Guy Lawson published a book detailing the "true story" of how three Miami youngsters became international arms dealers. 973 F. 3d 1304, 1306 (CA11 2020). A central plot point involves the protagonists' travels to Albania and subsequent run-ins with the "Albanian mafia," a key figure of which, the book claims, is petitioner Shkelzen Berisha. The book performed well, and Lawson eventually sold the movie rights to Warner Bros., which made the feature film War Dogs.

Unhappy with his portrayal, Berisha sued Lawson for defamation under Florida law. According to Berisha, he is not associated with the Albanian mafia—or any dangerous group—and Lawson recklessly relied on flimsy sources to contend that he was.

The District Court granted summary judgment in favor of Lawson. Setting aside questions of truth or falsity, the court simply asked whether Berisha is a "public figure." Why? Because under this Court's First Amendment jurisprudence, public figures cannot establish libel without proving by clear and convincing evidence that the defendant acted with " 'actual malice' "—that is with knowledge that the published material "was false or with reckless disregard of whether it was false." *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 280 (1964); accord, *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323, 334–335, 342 (1974); *Curtis Publishing Co.* v. *Butts*, 388 U. S. 130, 155 (1967). After concluding that Berisha is a public figure (or at least is one for purposes of Albanian weapons-trafficking stories), the court found that he had not satisfied this high standard. The Eleventh Circuit affirmed.

Berisha now asks this Court to reconsider the "actual malice" requirement as it applies to public figures. As I explained recently, we should. See *McKee* v. *Cosby*, 586 U. S. 1172, 1173 (2019) (opinion concurring in denial of certiorari).

This Court's pronouncement that the First Amendment requires public figures to establish actual malice bears "no relation to the text, history, or structure of the Constitution." *Tah* v. *Global Witness Publishing, Inc.*, 991 F. 3d 231, 251 (CADC 2021) (Silberman, J., dissenting) (emphasis deleted). In fact, the opposite rule historically prevailed: "[T]he common law deemed libels against public figures to be . . . *more* serious and injurious than ordinary libels." *McKee*, 586 U. S., at 1177 (opinion of THOMAS, J.).

The Court provided scant explanation for the decision to erect a new hurdle for public-figure plaintiffs so long after the First

Amendment's ratification. In *Gertz*, for example, the Court reasoned that public figures are fair targets because "they invite attention and comment." 418 U. S., at 345. That is, "public officials and public figures have voluntarily exposed themselves to increased risk of injury from defamatory falsehood." *Ibid.* But it is unclear why exposing oneself to an increased risk of becoming a victim necessarily means forfeiting the remedies legislatures put in place for such victims. And, even assuming that it is sometimes fair to blame the victim, it is less clear why the rule still applies when the public figure "has not voluntarily sought attention." 378 F. Supp. 3d 1145, 1158 (SD Fla. 2018); see also *Rosanova* v. *Playboy Enterprises, Inc.*, 580 F. 2d 859, 861 (CA5 1978) ("It is no answer to the assertion that one is a public figure to say, truthfully, that one doesn't choose to be").

The lack of historical support for this Court's actual-malice requirement is reason enough to take a second look at the Court's doctrine. Our reconsideration is all the more needed because of the doctrine's real-world effects. Public figure or private, lies impose real harm. Take, for instance, the shooting at a pizza shop rumored to be "the home of a Satanic child sex abuse ring involving top Democrats such as Hillary Clinton," Kennedy, 'Pizzagate' Gunman Sentenced to 4 Years in Prison, NPR (June 22, 2017), www.npr.org/section/thetwo-way/2017/06/22/533941689/pizzagate-gunman-sentenced-to-4-years-in-prison. Or consider how online posts falsely labeling someone as "a thief, a fraudster, and a pedophile" can spark the need to set up a home-security system. Hill, A Vast Web of Vengeance, N. Y. Times (Jan. 30, 2021), www.nytimes.com/2021/01/30/technology/change-my-google-results.html. Or think of those who have had job opportunities withdrawn over false accusations of racism or anti-Semitism. See, *e. g.*, Wemple, Bloomberg Law Tried To Suppress Its Erroneous Labor Dept. Story, Washington Post (Sept. 6, 2019), www.washingtonpost.com/opinions/2019/09/06/bloomberg-law-tried-suppress-its-erroneous-labor-dept-story. Or read about Kathrine McKee—surely this Court should not remove a woman's right to defend her reputation in court simply because she accuses a powerful man of rape. See *McKee*, 586 U. S., at 1172–1173 (opinion of THOMAS, J.).

The proliferation of falsehoods is, and always has been, a serious matter. Instead of continuing to insulate those who perpetrate lies from traditional remedies like libel suits, we should give them only the protection the First Amendment requires. I would grant certiorari.

JUSTICE GORSUCH, dissenting.

The Bill of Rights protects the freedom of the press not as a favor to a particular industry, but because democracy cannot function without the free exchange of ideas. To govern themselves wisely, the framers knew, people must be able to speak and write, question old assumptions, and offer new insights. "If a nation expects to be ignorant and free . . . it expects what never was and never will be. . . . There is no safe deposit for [liberty] but with the people . . . [w]here the press is free, and every man able to read." Letter from T. Jefferson to C. Yancey (Jan. 6, 1816), in 10 The Writings of Thomas Jefferson 4 (P. Ford ed. 1899).

Like most rights, this one comes with corresponding duties. The right to due process in court entails the duty to abide the results that process produces. The right to speak freely includes the duty to allow others to have their say. From the outset, the right to publish was no different. At the founding, the freedom of the press generally meant the government could not impose prior restraints preventing individuals from publishing what they wished. But none of that meant publishers could defame people, ruining careers or lives, without consequence. Rather, those exercising the freedom of the press had a responsibility to try to get the facts right—or, like anyone else, answer in tort for the injuries they caused.

This principle extended far back in the common law and far forward into our Nation's history. As Blackstone put it, "[e]very freeman has an undoubted right to lay what sentiments he pleases before the public," but if he publishes falsehoods "he must take the consequence of his own temerity." 4 W. Blackstone, Commentaries on the Laws of England 151–152 (1769). Or as Justice Story later explained, "the liberty of the press do[es] not authorize malicious and injurious defamation." *Dexter* v. *Spear*, 7 F. Cas. 624 (No. 3,867) (CC RI 1825).

This was "[t]he accepted view" in this Nation for more than two centuries. *Herbert* v. *Lando*, 441 U. S. 153, 158–159, and n. 4 (1979). Accordingly, "from the very founding" the law of defamation was "almost exclusively the business of state courts and legislatures." *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323, 369–370 (1974) (White, J., dissenting). As a rule, that meant all persons could recover damages for injuries caused by false publications about them. See Kurland, The Original Understanding of the Freedom of the Press Provision of the First Amendment, 55 Miss. L. J. 225, 234–237 (1985); J. Baker, An Introduction to English Legal History 474–475 (5th ed. 2019); Epstein, Was *New York Times* v. *Sullivan* Wrong? 53 U. Chi. L. Rev. 782, 801–802 (1986); *Peck* v. *Tribune Co.*, 214 U. S. 185, 189 (1909).

This changed only in 1964. In *New York Times Co.* v. *Sullivan*, 376 U. S. 254 (1964), this Court declared that public officials could no longer recover for defamation as everyone had for centuries. Now, public officials could prevail only by showing that an injurious falsehood was published with " 'actual malice.' " *Id.*, at 279–280. Three years later, the Court extended its actual malice standard from "public officials" in government to "public figures" outside government. See generally *Curtis Publishing Co.* v. *Butts*, 388 U. S. 130 (1967). Later still, the Court cast the net even wider, applying its new standard to those who have achieved "pervasive fame or notoriety" and those "limited" public figures who "voluntarily injec[t]" themselves or are "drawn into a particular public controversy." *Gertz*, 418 U. S., at 351. The Court viewed these innovations "overturning 200 years of libel law" as "necessary to implement the First Amendment interest in 'uninhibited, robust, and wide-open' debate on public issues." *Dun & Bradstreet, Inc.* v. *Greenmoss Builders, Inc.*, 472 U. S. 749, 766 (1985) (White, J., concurring in judgment).

Since 1964, however, our Nation's media landscape has shifted in ways few could have foreseen. Back then, building printing presses and amassing newspaper distribution networks demanded significant investment and expertise. See Logan, Rescuing Our Democracy by Rethinking *New York Times Co.* v. *Sullivan*, 81 Ohio St. L. J. 759, 794 (2020) (Logan). Broadcasting required licenses for limited airwaves and access to highly specialized equipment. See *ibid.* Comparatively large companies dominated the press, often employing legions of investigative reporters, editors, and fact-checkers. See *id.*, at 794–795. But "[t]he liberty of the press" has never been "confined to newspapers and periodicals"; it has always "comprehend[ed] every sort of publication which affords a vehicle of information and opinion." *Lovell* v. *City of Griffin*, 303 U. S. 444, 452 (1938); see also Sentelle, Freedom of the Press: A Liberty for All or a Privilege for a Few? 2013 Cato S. Ct. Rev. 15, 30–34. And thanks to revolutions in technology, today virtually anyone in this country can publish virtually anything for immediate consumption virtually anywhere in the world. Logan 803 (noting there are 4 billion active social media users worldwide).

The effect of these technological changes on our Nation's media may be hard to overstate. Large numbers of newspapers and periodicals have failed. See Grieco, Pew Research Center, Fast Facts About the Newspaper Industry's Financial Struggles as McClatchy Files for Bankruptcy (Feb. 14, 2020), http://www.pewresearch.org/fact-tank/2020/02/14/fast-facts-about-the-newspaper-industrys-financial-struggles/. Network news has lost most of its viewers. Pew Research Center, Network Evening News Ratings (Mar. 13, 2006), https://www.journalism.org/numbers/network-evening-news-ratings/. With their fall has come the rise of 24-hour cable news and online media platforms that "monetize anything that garners clicks." Logan 800. No doubt, this new media world has many virtues—not least the access it affords those who seek information about and the opportunity to debate public affairs. At the same time, some reports suggest that our new media environment also facilitates the spread of disinformation. *Id.*, at 804. A study of one social network reportedly found that "falsehood and rumor dominated truth by every metric, reaching more people, penetrating deeper . . . and doing so more quickly than accurate statements." *Id.*, at 804, n. 302; see Vosoughi, Roy, & Aral, The Spread of True and False News Online, Science Magazine, Mar. 9, 2018, pp. 1146–1151. All of which means that "the distribution of disinformation"—which "costs almost nothing to generate"—has become a "profitable" business while "the economic model that supported reporters, fact-checking, and editorial oversight" has "deeply erod[ed]." Logan 800.

It's hard not to wonder what these changes mean for the law. In 1964, the Court may have seen the actual malice standard as necessary "to ensure that dissenting or critical voices are not crowded out of public debate." Brief in Opposition 22. But if that justification had force in a world with comparatively few platforms for speech, it's less obvious what force it has in a world in which everyone carries a soapbox in their hands. Surely, too, the Court in 1964 may have thought the actual malice standard justified in part because other safeguards existed to deter the dissemination of defamatory falsehoods and misinformation.

Logan 794–795. In that era, many major media outlets employed fact-checkers and editors, *id.*, at 795, and one could argue that most strived to report true stories because, as "the public gain[ed] greater confidence that what they read [wa]s true," they would be willing to "pay more for the information so provided," Epstein, 53 U. Chi. L. Rev., at 812. Less clear is what sway these justifications hold in a new era where the old economic model that supported reporters, fact-checking, and editorial oversight is disappearing.

These questions lead to other even more fundamental ones. When the Court originally adopted the actual malice standard, it took the view that tolerating the publication of *some* false information was a necessary and acceptable cost to pay to ensure truthful statements vital to democratic self-government were not inadvertently suppressed. See *Sullivan*, 376 U. S., at 270–272. But over time the actual malice standard has evolved from a high bar to recovery into an effective immunity from liability. Statistics show that the number of trials involving defamation, privacy, and related claims based on media publications has declined dramatically over the past few decades: In the 1980s there were on average 27 per year; in 2017 there were 3. Logan 808–810 (surveying data from the Media Law Resource Center). For those rare plaintiffs able to secure a favorable jury verdict, nearly one out of five today will have their awards eliminated in post-trial motions practice. *Id.*, at 809. And any verdict that manages to make it past all that is still likely to be reversed on appeal. Perhaps in part because this Court's jurisprudence has been understood to invite appellate courts to engage in the unusual practice of revisiting a jury's factual determinations *de novo*, it appears just 1 of every 3 jury awards now survives appeal. *Id.*, at 809–810.

The bottom line? It seems that publishing *without* investigation, fact-checking, or editing has become the optimal legal strategy. See *id.*, at 778–779. Under the actual malice regime as it has evolved, "ignorance is bliss." *Id.*, at 778. Combine this legal incentive with the business incentives fostered by our new media world and the deck seems stacked against those with traditional (and expensive) journalistic standards—and in favor of those who can disseminate the most sensational information as efficiently as possible without any particular concern for truth. See *ibid.* What started in 1964 with a decision to tolerate the occasional falsehood to ensure robust reporting by a comparative handful of print and broadcast outlets has evolved into an ironclad subsidy for the publication of falsehoods by means and on a scale previously unimaginable. *Id.*, at 804. As *Sullivan*'s actual malice standard has come to apply in our new world, it's hard not to ask whether it now even "cut[s] against the very values underlying the decision." Kagan, A Libel Story: *Sullivan* Then and Now, 18 L. & Soc. Inquiry 197, 207 (1993) (reviewing A. Lewis, Make No Law: The *Sullivan* Case and the First Amendment (1991)). If ensuring an informed democratic debate is the goal, how well do we serve that interest with rules that no longer merely tolerate but encourage falsehoods in quantities no one could have envisioned almost 60 years ago?

Other developments raise still more questions. In 1964, the Court may have thought the actual malice standard would apply only to a small number of prominent governmental officials whose names were always in the news and whose actions involved the administration of public affairs. Here again, the Court may have thought that allowing some falsehoods about these persons and topics was an acceptable price to pay to ensure truthful statements vital to democratic self-government were not inadvertently suppressed. Perhaps the Court weighed the costs and benefits similarly when it extended the actual malice standard to the "pervasively famous" and "limited purpose public figures."

But today's world casts a new light on these judgments as well. Now, private citizens can become "public figures" on social media overnight. Individuals can be deemed "famous" because of their notoriety in certain channels of our now-highly segmented media even as they remain unknown in most. See, *e. g., Hibdon* v. *Grabowski*, 195 S. W. 3d 48, 59, 62 (Tenn. App. 2005) (holding that an individual was a limited-purpose public figure in part because he "entered into the jet ski business and voluntarily advertised on the news group *rec.sport.jetski*, an Internet site that is accessible worldwide"). Lower courts have even said that an individual can become a limited purpose public figure simply by *defending* himself from a defamatory statement. See *Berisha* v. *Lawson*, 973 F. 3d 1304, 1311 (CA11 2020). Other persons, such as victims of sexual assault seeking to confront their assailants, might choose to enter the public square only reluctantly and yet wind up treated as limited purpose public figures too. See *McKee* v. *Cosby,* 586 U. S. 1172 (2019) (THOMAS, J., concurring in denial of certiorari). In many ways, it seems we have arrived in a world that dissenters proposed but majorities rejected in the *Sullivan* line of cases—one in which, "voluntarily or not, we are all public [figures] to some degree." *Gertz*, 418 U. S., at 364 (Brennan, J., dissenting) (brackets and internal quotation marks omitted).

Again, it's unclear how well these modern developments serve *Sullivan*'s original purposes. Not only has the doctrine evolved into a subsidy for published falsehoods on a scale no one could have foreseen, it has come to leave far more people without redress than anyone could have predicted. And the very categories and tests this Court invented and instructed lower courts to use in this area—"pervasively famous," "limited purpose public figure"—seem increasingly malleable and even archaic when almost anyone can attract some degree of public notoriety in some media segment. Rules intended to ensure a robust debate over actions taken by high public officials carrying out the public's business increasingly seem to leave even ordinary Americans without recourse for grievous defamation. At least as they are applied today, it's far from obvious whether *Sullivan*'s rules do more to encourage people of goodwill to engage in democratic self-governance or discourage them from risking even the slightest step toward public life.

"In a country like ours, where the people . . . govern themselves through their elected representatives, adequate information about their government is of transcendent importance." *Dun & Bradstreet*, 472 U. S., at 767 (White, J., concurring in judgment). Without doubt, *Sullivan* sought to promote that goal as the Court saw the world in 1964. Departures from the Constitution's original public meaning are usually the product of good intentions. But less clear is how well *Sullivan* and all its various extensions serve its intended goals in today's changed world. Many Members of this Court have raised questions about various aspects of *Sullivan*. See, *e. g., McKee*, 586 U. S., at 1172 (opinion of THOMAS, J.); *Coughlin* v. *Westinghouse Broadcasting & Cable, Inc.*, 476 U. S. 1187 (1986) (Burger, C. J., joined by Rehnquist, J., dissenting from denial of certiorari); *Gertz*, 418 U. S., at 370 (White, J., dissenting); *Rosenbloom* v. *Metromedia, Inc.*, 403 U. S. 29, 62 (1971) (Harlan, J., dissenting); *id.*, at 78 (Marshall, J., dissenting); *Rosenblatt* v. *Baer*, 383 U. S. 75, 92–93 (1966) (Stewart, J., concurring); see also Kagan, 18 L. & Soc. Inquiry, at 205, 209; Lewis & Ottley, *New York Times* v. *Sullivan* at 50, 64 De Paul L. Rev. 1, 35–36

(2014) (collecting statements from Justice Scalia). Justice Thomas does so again today. In adding my voice to theirs, I do not profess any sure answers. I am not even certain of all the questions we should be asking. But given the momentous changes in the Nation's media landscape since 1964, I cannot help but think the Court would profit from returning its attention, whether in this case or another, to a field so vital to the "safe deposit" of our liberties.

No. 20–1066. Hoggard *v.* Rhodes et al. C. A. 8th Cir. Certiorari denied. Reported below: 973 F. 3d 868.

Statement of Justice Thomas respecting the denial of certiorari.

As I have noted before, our qualified immunity jurisprudence stands on shaky ground. *Ziglar* v. *Abbasi*, 582 U. S. 120, 156 (2017) (opinion concurring in part and concurring in judgment); *Baxter* v. *Bracey*, 590 U. S. 1011 (2020) (opinion dissenting from denial of certiorari). Under this Court's precedent, executive officers who violate federal law are immune from money damages suits brought under Rev. Stat. § 1979, 42 U. S. C. § 1983, unless their conduct violates a "clearly established statutory or constitutional righ[t] of which a reasonable person would have known." *Mullenix* v. *Luna*, 577 U. S. 7, 11 (2015) (*per curiam*) (internal quotation marks omitted). But this test cannot be located in § 1983's text and may have little basis in history. *Baxter*, 590 U. S., at 1012, 1013–1014 (opinion of Thomas, J.).

Aside from these problems, the one-size-fits-all doctrine is also an odd fit for many cases because the same test applies to officers who exercise a wide range of responsibilities and functions. *Ziglar*, 582 U. S., at 158–160 (opinion of Thomas, J.).* This petition illustrates that oddity: Petitioner alleges that university officials violated her First Amendment rights by prohibiting her from placing a small table on campus near the student union building to promote a student organization. According to the university, petitioner could engage with students only in a designated "Free Expression Area"—the use of which required prior permission

*Certain Government officials receive heightened immunity, including absolute immunity, based on the common law or their constitutional status. *Harlow* v. *Fitzgerald*, 457 U. S. 800, 807 (1982) (discussing judges, prosecutors, and the President, among others).

from the school. The Eighth Circuit concluded that this policy of restricting speech around the student union was unconstitutional as applied to petitioner. *Turning Point USA at Ark. State Univ.* v. *Rhodes*, 973 F. 3d 868, 879 (2020). Yet it granted immunity to the officials after determining that their actions, though unlawful, had not transgressed " 'clearly established' " precedent. *Id.*, at 881.

But why should university officers, who have time to make calculated choices about enacting or enforcing unconstitutional policies, receive the same protection as a police officer who makes a split-second decision to use force in a dangerous setting? We have never offered a satisfactory explanation to this question. See *Ziglar*, 582 U. S., at 158–160 (opinion of Thomas, J.).

This approach is even more concerning because "our analysis is [not] grounded in the common-law backdrop against which Congress enacted [§ 1983]." *Id.*, at 159. It may be that the police officer would receive more protection than a university official at common law. See Oldham, Official Immunity at the Founding, 46 Harv. J. L. & Pub. Pol'y 105, 128–129 (suggesting that the "concept of unreasonableness [in the Fourth Amendment] could bring with it [common-law] official immunities"). Or maybe the opposite is true. Lee, The Curious Life of *In Loco Parentis* at American Universities, 8 Higher Ed. in Rev. 65, 67 (2011) (discussing how "[f]rom the mid-1800s to the 1960s" "constitutional rights stopped at the college gates—at both private and public institutions"). Whatever the history establishes, we at least ought to consider it. Instead, we have "substitute[d] our own policy preferences for the mandates of Congress" by conjuring up blanket immunity and then failed to justify our enacted policy. *Ziglar*, 582 U. S., at 160 (opinion of Thomas, J.).

The parties did not raise or brief these specific issues below. But in an appropriate case, we should reconsider either our one-size-fits-all test or the judicial doctrine of qualified immunity more generally.

No. 20–1214. Eychaner *v.* City of Chicago, Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Justice Kavanaugh would grant the petition for writ of certiorari. Reported below: 2020 IL App (1st) 191053, 171 N. E. 3d 31.

JUSTICE THOMAS, with whom JUSTICE GORSUCH joins, dissenting.

Fred Eychaner owned a tract of land in Chicago's River West neighborhood. Two blocks south stood a factory, owned and operated by the Blommer Chocolate Company. The company wanted Eychaner's land to create a buffer with nearby residential areas, so it offered to purchase the property for $824,980. Eychaner declined.

Eychaner's refusal to sell, however, did not end the matter. Two months later, the city of Chicago notified Eychaner that it was considering whether to take his property. As formalized later, the city planned to invoke its eminent domain power to transfer Eychaner's property to the company.

At face value, this plan conflicted with the settled constitutional rule that a "sovereign may not take the property of *A* for the sole purpose of transferring it to another private party *B*, even though *A* is paid just compensation." *Kelo* v. *New London*, 545 U. S. 469, 477 (2005); see also *Calder* v. *Bull*, 3 Dall. 386, 388 (1798). Governments can take property only "for public use." U. S. Const., Amdts. 5, 14; see also *Kelo*, 545 U. S., at 507 (THOMAS, J., dissenting).

So Chicago identified an ostensible "public use": The city needed to transfer the land to the factory because otherwise it "may become a blighted area." Ill. Comp. Stat., ch. 65, § 5/11–74.4–3(b) (West 2018). Although Eychaner argued that stemming speculative future problems is not a public use, the Appellate Court of Illinois disagreed, holding that the city "may use the power of eminent domain to prevent future blight." 2015 IL App (1st) 131883, ¶69, 26 N. E. 3d 501, 521.

We should grant certiorari for two reasons.

First, this petition provides us the opportunity to correct the mistake the Court made in *Kelo*. There, the Court found the Fifth Amendment's "public use" requirement satisfied when a city transferred land from one private owner to another in the name of economic development. See 545 U. S., at 484. That decision was wrong the day it was decided. And it remains wrong today. "Public use" means something more than any conceivable "public purpose." See *id.*, at 508–511 (THOMAS, J., dissenting). The Constitution's text, the common-law background, and the early practice of eminent domain all indicate "that the Takings Clause authorizes the taking of property only if the public has a right to employ it, not if the public realizes any conceivable benefit from the taking." *Id.*, at 507–514; see also *id.*, at 479 (majority opinion) (acknowledging that "many state courts in the mid-19th century endorsed 'use by the public' as the proper definition of public use"). Taking land from one private party to give to another rarely will be for "public use." But see *id.*, at 513–514 (THOMAS, J., dissenting). The majority in *Kelo* strayed from the Constitution to diminish the right to be free from private takings. See generally *id.*, at 505–523.

Second, even accepting *Kelo* as good law, this petition allows us to clarify the Public Use Clause and its remaining limits. *Kelo* weakened the public-use requirement but did not abolish it. In fact, the *Kelo* majority favorably cited an opinion that had concluded that a taking to prevent "future blight" violated the Public Use Clause. *Id.*, at 487, and n. 17 (citing *99 Cents Only Stores* v. *Lancaster Redevelopment Agency*, 237 F. Supp. 2d 1123 (CD Cal. 2001)). This Court should not stand by as lower courts further dismantle constitutional safeguards.

Failure to step in today not only disserves the Constitution and our precedent, but also leaves in place a legal regime that benefits "those citizens with disproportionate influence and power in the political process, including large corporations and development firms." *Kelo*, 545 U. S., at 505 (O'Connor, J., dissenting). This case is a prime example. Blommer is purportedly the largest cocoa processor and ingredient chocolate supplier in North America and worth $750 million dollars.*

And Chicago has decided to use the coercive power of the government to give the company a valuable parcel of not-yet-blighted-land. According to the court below, this forcible transaction is permissible, in part, because "[r]ecognizing the difference between a valid public use and a sham can be challenging." 26 N. E. 3d, at 521. I think that, if our doctrine makes it difficult to discern public use from private favors, we should grant certiorari to provide some much needed clarity.

JULY 19, 2021

Miscellaneous Order

IT IS ORDERED that the Court's orders of March 19, 2020, and April 15, 2020, relating to COVID–19 are rescinded, subject to the clarifications set forth below.

---

*See Elejalde-Ruiz, Blommer Chocolate To Be Sold to Japanese Company, The Chicago Tribune, Nov. 19, 2018, www.chicagotribune.com/business/ct-biz-blommer-chocolate-sale-20181119-story.html.

IT IS FURTHER ORDERED that, in any case in which the relevant lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing was issued prior to July 19, 2021, the deadline to file a petition for a writ of certiorari remains extended to 150 days from the date of that judgment or order. In any case in which the relevant lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing was issued on or after July 19, 2021, the deadline to file a petition for a writ of certiorari is as provided by this Court's Rule 13.

IT IS FURTHER ORDERED that the requirement of Rule 33.1 that 40 copies of documents be submitted in booklet format will go back into effect as to covered documents filed on or after September 1, 2021. For submissions pursuant to Rule 33.2, the requirement of Rule 39 that an original and 10 copies be submitted, where applicable, will also go back into effect as to covered documents filed on or after September 1, 2021. The authorization to file a single copy of certain documents on 8½ × 11 inch paper, as set forth in the Court's April 15, 2020 order, will remain in effect only as to documents filed before September 1, 2021.

IT IS FURTHER ORDERED that the following types of documents should not be filed in paper form if they are submitted through the Court's electronic filing system: (1) motions for an extension of time under Rule 30.4; (2) waivers of the right to respond to a petition under Rule 15.5; and (3) blanket consents to the filing of *amicus* briefs under Rules 37.2(a) and 37.3(a). Notwithstanding Rule 34.6 and paragraph 9 of the Guidelines for the Submission of Documents to the Supreme Court's Electronic Filing System, these enumerated filings should be filed electronically in cases governed by Rule 34.6, although other types of documents in those cases should be filed in paper form only.

July 23, 2021

Dismissal Under Rule 46

No. 20–7634. Abraham *v.* United States. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 833 Fed. Appx. 822.

AUGUST 2, 2021

Miscellaneous Orders

No. 20A173 (20–8298). RAMEY *v.* SUPERIOR COURT OF CALIFORNIA, SAN BERNARDINO COUNTY, ET AL. Super. Ct. Cal., County of San Bernardino. Application for stay, addressed to JUSTICE GORSUCH and referred to the Court, denied.

No. D–3075. IN RE DISBARMENT OF HOFFMAN. Disbarment entered. [For earlier order herein, see 593 U. S. 911.]

No. 20–443. UNITED STATES *v.* TSARNAEV. C. A. 1st Cir. [Certiorari granted, 592 U. S. 1317.] Motion of petitioner for leave to file volume III of the joint appendix under seal with redacted copies for the public record granted.

No. 20–794. SERVOTRONICS, INC. *v.* ROLLS-ROYCE PLC ET AL. C. A. 7th Cir. [Certiorari granted, 592 U. S. 1317.] 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.

Rehearing Denied

No. 20–1060. OLIVA *v.* NIVAR ET AL., 593 U. S. 1004;
No. 20–1077. AMAZON.COM, INC., ET AL. *v.* WAITHAKA, 594 U. S. 906;
No. 20–1254. RAO *v.* MIDLAND TRUST CO., 593 U. S. 986;
No. 20–1318. SHACK *v.* NBC UNIVERSAL MEDIA, LLC, ET AL., 593 U. S. 1024;
No. 20–1386. EISELE *v.* ESTATE OF SMITH, 593 U. S. 1032;
No. 20–1404. GARRETT *v.* UNITED STATES, 593 U. S. 1025;
No. 20–1413. BROWN *v.* FEDERAL NATIONAL MORTGAGE ASSOCIATION, 593 U. S. 1025;
No. 20–1503. LAITY *v.* HARRIS, 593 U. S. 1025;
No. 20–1513. PATEL *v.* TRUMP CORP. ET AL., 593 U. S. 1045;
No. 20–1578. GRAVEN *v.* ARIZONA, 594 U. S. 1046;
No. 20–6492. JAMES *v.* UNITED STATES, 592 U. S. 1311;
No. 20–6580. PEEPLES *v.* UNITED STATES, 592 U. S. 1238;
No. 20–6858. SOTO *v.* AFSCME UNION COUNCIL 5 LOCAL 12181 ET AL., 592 U. S. 1312;

No. 20–7053. Manuel Torres *v.* Texas, 593 U. S. 931;

No. 20–7071. Russell *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division, 593 U. S. 989;

No. 20–7093. Turner *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division, 593 U. S. 931;

No. 20–7116. Del Pino Allen *v.* Board of Trustees of Miami Dade College, 593 U. S. 1026;

No. 20–7257. Knox *v.* Magera et al., 593 U. S. 917;

No. 20–7320. Laskowski *v.* Washington State Department of Labor and Industries, 593 U. S. 934;

No. 20–7326. Valentine *v.* United States, 593 U. S. 1034;

No. 20–7352. In re Rudolph, 593 U. S. 984;

No. 20–7384. Toliver *v.* Adner, 593 U. S. 934;

No. 20–7398. Jokhoo *v.* Velaquez-Aguilu, Assistant United States Attorney, 593 U. S. 918;

No. 20–7568. Coffey *v.* South Carolina, 593 U. S. 1027;

No. 20–7606. Ajjahnon *v.* St. Joseph's University Medical Center et al., 593 U. S. 1028;

No. 20–7654. Douglas *v.* State Bar of California, 593 U. S. 1035;

No. 20–7668. Weidrick *v.* Biden, President of the United States, et al., 593 U. S. 1041;

No. 20–7669. Jackson *v.* Alabama, 593 U. S. 1035;

No. 20–7689. Wilmore *v.* United States, 593 U. S. 994;

No. 20–7734. Affiah *v.* Texas Southmost College et al., 593 U. S. 1009; and

No. 20–7821. In re Toth, 593 U. S. 984. Petitions for rehearing denied.

No. 19–8517. Novotny *v.* Plexus Corp. et al., 592 U. S. 929;

No. 20–1247. Dix *v.* Edelman Financial Services, LLC, et al., 593 U. S. 999;

No. 20–6012. Young *v.* United States, 592 U. S. 1137; and

No. 20–7527. Johnston *v.* McGinnis et al., 593 U. S. 1019. Petitions for rehearing denied. Justice Barrett took no part in the consideration or decision of these petitions.

No. 20–1267. Byers *v.* Commissioner of Internal Revenue, 593 U. S. 981. Petition for rehearing denied. Justice

Kavanaugh took no part in the consideration or decision of this petition.

August 11, 2021

Dismissal Under Rule 46

No. 20–1787. YourMechanic, Inc. *v.* Provost. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari dismissed under this Court's Rule 46. Reported below: 55 Cal. App. 5th 982, 269 Cal. Rptr. 3d 903.

August 12, 2021

Miscellaneous Order

No. 21A8. Chrysafis et al. *v.* Marks. Application for injunctive relief, presented to Justice Sotomayor, and by her referred to the Court, granted 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.

This order enjoins the enforcement of only Part A of the COVID–19 Emergency Eviction and Foreclosure Prevention Act (CEEFPA). 2020 N. Y. Laws ch. 381. That is the only relief applicants seek. See case No. 2:21–cv–02516, ECF Doc. 1, p. 9; Emergency Application for Writ of Injunction 7, 40. If a tenant self-certifies financial hardship, Part A of CEEFPA generally precludes a landlord from contesting that certification and denies the landlord a hearing. This scheme violates the Court's longstanding teaching that ordinarily "no man can be a judge in his own case" consistent with the Due Process Clause. *In re Murchison*, 349 U. S. 133, 136 (1955); see *United States* v. *James Daniel Good Real Property,* 510 U. S. 43, 53 (1993) (due process generally requires a hearing).

This order does not enjoin the enforcement of the Tenant Safe Harbor Act (TSHA), which applicants do not challenge. 2020 N. Y. Laws ch. 127, §§ 1, 2(2)(a). Among other things, TSHA instructs New York courts to entertain a COVID-related hardship defense in eviction proceedings, assessing a tenant's income prior to COVID, income during COVID, liquid assets, and ability to obtain government assistance. § 2(2)(b). If the court finds the tenant "has suffered a financial hardship" during a statutorily prescribed period, then it "shall [not] issue a warrant of eviction or judgment of possession." § 2(1).

Justice Breyer, with whom Justice Sotomayor and Justice Kagan join, dissenting.

The New York Legislature has passed two laws regulating evictions during the COVID–19 pandemic. The first is the Tenant Safe Harbor Act, which provides tenants who have "suffered a financial hardship during the COVID–19 covered period" with a defense in eviction proceedings. 2020 N. Y. Laws ch. 127, § 2.2.(a) (McKinney). The second is the COVID–19 Emergency Eviction and Foreclosure Prevention Act of 2020 (CEEFPA). CEEFPA simplifies the process for tenants to invoke financial hardship during the pandemic as a defense to eviction. Tenants who wish to assert the defense must provide a sworn attestation stating that they are experiencing financial hardship or health impacts as a result of the pandemic. 2020 N. Y. Laws ch. 381, pt. A, § 4. The attestation pauses eviction proceedings until the time that CEEFPA expires, namely the end of August 2021. §§ 2, 4, 6, 8; 2021 N. Y. Laws ch. 104 (establishing CEEFPA's August 31, 2021, expiration date). Pending eviction proceedings are stayed, new eviction proceedings cannot be filed, and outstanding eviction warrants cannot be executed until that date. 2020 N. Y. Laws ch. 381, pt. A, §§ 2, 4, 6, 8. Eviction proceedings may resume after August 31, 2021.

Only CEEFPA is before us. Applicants, five New York landlords and one landlords' association, seek an "extraordinary" form of relief: "an injunction against enforcement of a presumptively constitutional state legislative act," *Respect Maine PAC* v. *McKee*, 562 U. S. 996 (2010), in circumstances where the request for an injunction was denied in the lower courts, and the court of appeals has yet to issue a substantive ruling. Moreover, the challenged law will expire in less than three weeks. Under these circumstances, such drastic relief would only be appropriate if "the legal rights at issue [we]re indisputably clear and, even then, sparingly and only in the most critical and exigent circumstances." *South Bay United Pentecostal Church* v. *Newsom*, 590 U. S. 965, 966 (2020) (Roberts, C. J., concurring in denial of application for injunctive relief) (internal quotation marks omitted). I conclude that this strict standard is not met here, for three reasons.

First, the legal rights at issue in this case are not "indisputably clear." Applicants argue that CEEFPA denies landlords due process of law because once a tenant submits an attestation of financial hardship, evictions cannot proceed and the landlord cannot challenge the tenant's claim of hardship, for example, in court. Respondent argues, however, that the law is best viewed not as a deprivation of the right to challenge a tenant's hardship claim but as simply delaying the exercise of that right—as of now for less than three weeks until the law expires. After August 31, New York's eviction proceedings will be conducted exactly as they were before CEEFPA's enactment. Our precedents do not make it "indisputably clear" that this delay violates the Constitution. See *Sosna* v. *Iowa*, 419 U. S. 393, 410 (1975) (due process is not offended when "the gravamen of [the] claim is not total deprivation . . . but only delay").

Applicants also argue that CEEFPA violates their First Amendment right against compelled speech, because it requires them to provide their tenants with certain notices. However, there are persuasive arguments that CEEFPA requires only the dissemination of "purely factual and uncontroversial information" in the context of commercial speech and is therefore authorized by our precedents. *Zauderer* v. *Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U. S. 626, 651 (1985). Given the arguments on the other side, I again cannot say that the legal rights in issue are indisputably clear.

Second, applicants have not shown that critical or exigent circumstances justify our intervention. As I have said, CEEFPA's pause on eviction proceedings will expire in less than three weeks, alleviating the hardship to New York landlords. Any hardship is further alleviated by provisions of CEEFPA that provide relief from foreclosure for property owners who own 10 or fewer dwelling units. See 2020 N. Y. Laws ch. 381, pt. B, subpts. A–B. Further, landlords' hardship is alleviated because CEEFPA does not preclude them from seeking unpaid rent and other damages in a common-law action. Finally, respondent states that New York is currently distributing more than $2 billion in aid that can be used in part to pay back rent, thereby helping to alleviate the need for evictions. See 2021 N. Y. Laws ch. 53, p. 635.

While applicants correctly point out that there are landlords who suffer hardship, we must balance against the landlords' hardship the hardship to New York tenants who have relied on CEEFPA's protections and will now be forced to face eviction proceedings earlier than expected. This is troubling because, as noted, New York is in the process of distributing over $2 billion in federal assistance that will help tenants affected by the pandemic avoid eviction. See *ibid.*; Consolidated Appropriations Act, 2021, H. R. 133, 116th Cong., 2d Sess., 686–692 (2020). Ending CEEFPA's protections early may lead to unnecessary evictions. It is impossible—especially on the abbreviated schedule of an application for an emergency injunction—to know whether more hardship will result from leaving CEEFPA in place or from barring its enforcement.

Third, the public interest weighs in favor of respecting New York's "especially broad" latitude "to act in areas fraught with medical and scientific uncertainties." *Marshall* v. *United States*, 414 U. S. 417, 427 (1974). The New York Legislature is responsible for responding to a grave and unpredictable public health crisis. It must combat the spread of a virulent disease, mitigate the financial suffering caused by business closures, and minimize the number of unnecessary evictions. The legislature does not enjoy unlimited discretion in formulating that response, but in this case I would not second-guess politically accountable officials' determination of how best to " 'guard and protect' " the people of New York. *South Bay United Pentecostal Church*, 590 U. S., at 967 (Roberts, C. J., concurring) (quoting *Jacobson* v. *Massachusetts*, 197 U. S. 11, 38 (1905)).

For these reasons, I would not grant relief now, and therefore respectfully dissent. Of course, if New York extends CEEFPA's provisions in their current form, applicants can renew their request for an injunction.

August 23, 2021

Miscellaneous Orders

No. 143, Orig. Mississippi *v.* Tennessee et al. Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted, and the time is allotted as follows: 30 minutes for plaintiff, 20 minutes for defendants, and 15 minutes for the Acting Solicitor General. [For earlier order herein, see, *e. g.*, 594 U. S. 952.]

No. 20–794. Servotronics, Inc. *v.* Rolls-Royce PLC et al. C. A. 7th Cir. [Certiorari granted, 592 U. S. 1317.] The time for oral argument is allotted as follows: 30 minutes for petitioner, 20 minutes for respondents, and 15 minutes for the Acting Solicitor General. Justice Alito took no part in the consideration or decision of this order.

No. 20–979. Patel et al. *v.* Garland, Attorney General. C. A. 11th Cir. [Certiorari granted, 594 U. S. 925.] Motion of petitioners to dispense with printing joint appendix granted.

No. 20–1374. CVS Pharmacy, Inc., et al. *v.* Doe et al. C. A. 9th Cir. Motion to substitute Richard Roe, authorized representative, as a respondent in place of John Doe Two, deceased, granted.

No. 20–1459. United States *v.* Taylor. C. A. 4th Cir. [Certiorari granted, 594 U. S. 953.] Motion of petitioner to dispense with printing joint appendix granted.

No. 20–1541. Pivotal Software, Inc., et al. *v.* Superior Court of California, City and County of San Francisco, et al. Ct. App. Cal., 1st App. Dist., Div. 5. [Certiorari granted, 594 U. S. 953.] Motion of petitioners to dispense with printing joint appendix granted.

Certiorari Granted

No. 19–896. Johnson, Acting Director of U. S. Immigration and Customs Enforcement, et al. *v.* Arteaga-Martinez. C. A. 3d Cir. Certiorari granted.

No. 20–322. Garland, Attorney General, et al. *v.* Aleman Gonzalez et al. (Reported below: 955 F. 3d 762); and Garland, Attorney General, et al. *v.* Flores Tejada et al. (954 F. 3d 1245). C. A. 9th Cir. Certiorari granted. In addition to the question presented by the petition, the parties are directed to brief and argue the following question: "Whether, under 8 U. S. C. § 1252(f)(1), the courts below had jurisdiction to grant classwide injunctive relief."

Rehearing Denied

No. 20–645. Standing Akimbo, LLC, et al. *v.* United States, 594 U. S. 934;

No. 20–1113. American Hospital Assn. et al. *v.* Becerra, Secretary of Health and Human Services, 594 U. S. 926;

No. 20–1330. Domino *v.* California Correctional Health Care Services et al., 593 U. S. 1005;

No. 20–1331. Clemens *v.* Local One Service Employees International Union et al., 593 U. S. 1005;

No. 20–1332. Speidell et al. *v.* United States, 594 U. S. 908;

No. 20–1343. Kimner *v.* Web Watchers et al., 593 U. S. 1005;

No. 20–1345. Arnold *v.* City of Auburn, Washington, 593 U. S. 1005;

No. 20–1368. Rollo-Carlson, as Trustee for Flackus-Carlson, Deceased *v.* United States, 593 U. S. 987;

No. 20–1450. Murphy *v.* Blalock, as Executrix of the Estate of Murphy-Wallace, 593 U. S. 1045;

No. 20–1525. Archer *v.* America's First Federal Credit Union, 594 U. S. 929;

No. 20–5075. Baez-Martinez *v.* United States, 594 U. S. 909;

No. 20–6358. Dawson *v.* Valdez et al., 592 U. S. 1221;

No. 20–7376. Martin *v.* Ohio, 593 U. S. 990;

No. 20–7406. Robinson *v.* Inch, Secretary, Florida Department of Corrections, 593 U. S. 1047;

No. 20–7407. Solar-Somohano *v.* Coca-Cola Co. et al., 593 U. S. 991;

No. 20–7429. Davis *v.* Shinn, Director, Arizona Department of Corrections, Rehabilitation and Reentry, et al., 593 U. S. 978;

No. 20–7438. Stegawski *v.* United States, 593 U. S. 935;

No. 20–7538. Jones *v.* Georgia, 593 U. S. 1008;

No. 20–7541. Jo, as Personal Representative of the Estate of Mee Jin-Jo *v.* JPMC Specialty Mortgage, LLC, 593 U. S. 1008;

No. 20–7559. Oxendine-Taylor *v.* Eastern Band of Cherokee Indians, Council, 593 U. S. 1026;

No. 20–7613. Womack *v.* Oxley, 593 U. S. 1034;

No. 20–7627. Shabani *v.* City of Madison, Wisconsin, et al.; Shabani *v.* Wisconsin et al.; and Shabani *v.* Kalka et al., 593 U. S. 1034;

No. 20–7650. In re Zou, 593 U. S. 1031;

No. 20–7691. Washington *v.* Williams, Warden, et al., 593 U. S. 1047;

No. 20–7745. Myles *v.* United States, 593 U. S. 995;
No. 20–7751. Lopez *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division, 593 U. S. 1048;
No. 20–7754. Yerton *v.* Oklahoma, 593 U. S. 1048;
No. 20–7766. Davis *v.* Reagle, Warden, 593 U. S. 1036;
No. 20–7799. Vaughan *v.* Foltz et al., 594 U. S. 916;
No. 20–7814. Bowie *v.* Hamilton County Juvenile Court et al., 594 U. S. 916;
No. 20–7816. Afolabi *v.* Warden, Federal Correctional Institution Fort Dix, 593 U. S. 1009; and
No. 20–7906. Silva *v.* United States, 593 U. S. 1029. Petitions for rehearing denied.

No. 20–7233. Bumphus *v.* Unique Personnel Consultants et al., 593 U. S. 969. Petition for rehearing denied. Justice Barrett took no part in the consideration or decision of this petition.

August 24, 2021

Miscellaneous Order

No. 21A21. Biden, President of the United States, et al. *v.* Texas et al. D. C. N. D. Tex. Application for stay, presented to Justice Alito, and by him referred to the Court, denied. Applicants have failed to show a likelihood of success on the claim that the memorandum rescinding the Migrant Protection Protocols was not arbitrary and capricious. See *Department of Homeland Security* v. *Regents of Univ. of Cal.*, 591 U. S. 1, 16–19, 24–33 (2020). Our order denying the Government's request for a stay of the District Court injunction should not be read as affecting the construction of that injunction by the Court of Appeals. Justice Breyer, Justice Sotomayor, and Justice Kagan would grant the application.

September 1, 2021

Miscellaneous Order

No. 21A24. Whole Woman's Health et al. *v.* Jackson, Judge, et al. Application for injunctive relief or, in the alternative, to vacate stays of the United States District Court for the Western District of Texas proceedings, presented to Justice Alito, and by him referred to the Court, denied. To prevail in an application for a stay or an injunction, an applicant must carry the burden of making a " 'strong showing' " that it is " 'likely to succeed on the merits,' " that it will be " 'irreparably injured absent a stay,' " that the balance of the equities favors it, and that a stay is consistent with the public interest. *Nken* v. *Holder*, 556 U. S. 418, 434 (2009); *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 592 U. S. 14, 16 (2020) (*per curiam*) (citing *Winter* v. *Natural Resources Defense Council, Inc.*, 555 U. S. 7, 20 (2008)). The applicants now before us have raised serious questions regarding the constitutionality of the Texas law at issue. But their application also presents complex and novel antecedent procedural questions on which they have not carried their burden. For example, federal courts enjoy the power to enjoin individuals tasked with enforcing laws, not the laws themselves. *California* v. *Texas*, 593 U. S. 659, 672 (2021). And it is unclear whether the named defendants in this lawsuit can or will seek to enforce the Texas law against the applicants in a manner that might permit our intervention. *Clapper* v. *Amnesty Int'l USA*, 568 U. S. 398, 409 (2013) (" 'threatened injury must be *certainly impending*' "). The State has represented that neither it nor its executive employees possess the authority to enforce the Texas law either directly or indirectly. Nor is it clear whether, under existing precedent, this Court can issue an injunction against state judges asked to decide a lawsuit under Texas' law. See *Ex parte Young*, 209 U. S. 123, 163 (1908). Finally, the sole private-citizen respondent before us has filed an affidavit stating that he has no present intention to enforce the law. In light of such issues, we cannot say the applicants have met their burden to prevail in an injunction or stay application. In reaching this conclusion, we stress that we do not purport to resolve definitively any jurisdictional or substantive claim in the applicants' lawsuit. In particular, this order is not based on any conclusion about the constitutionality of Texas' law, and in no way limits other procedurally proper challenges to the Texas law, including in Texas state courts.

Chief Justice Roberts, with whom Justice Breyer and Justice Kagan join, dissenting.

The statutory scheme before the Court is not only unusual, but unprecedented. The legislature has imposed a prohibition on abortions after roughly six weeks, and then essentially delegated enforcement of that prohibition to the populace at large. The desired consequence appears to be to insulate the State from responsibility for implementing and enforcing the regulatory regime.

The state defendants argue that they cannot be restrained from enforcing their rules because they do not enforce them in the first place. I would grant preliminary relief to preserve the status quo ante—before the law went into effect—so that the courts may consider whether a State can avoid responsibility for its laws in such a manner. Defendants argue that existing doctrines preclude judicial intervention, and they may be correct. See *California* v. *Texas*, 593 U. S. 659, 672 (2021). But the consequences of approving the state action, both in this particular case and as a model for action in other areas, counsel at least preliminary judicial consideration before the program devised by the State takes effect.

We are at this point asked to resolve these novel questions—at least preliminarily—in the first instance, in the course of two days, without the benefit of consideration by the District Court or Court of Appeals. We are also asked to do so without ordinary merits briefing and without oral argument. These questions are particularly difficult, including for example whether the exception to sovereign immunity recognized in *Ex parte Young*, 209 U. S. 123 (1908), should extend to state court judges in circumstances such as these.

I would accordingly preclude enforcement of S. B. 8 by the respondents to afford the District Court and the Court of Appeals the opportunity to consider the propriety of judicial action and preliminary relief pending consideration of the plaintiffs' claims.

Although the Court denies the applicants' request for emergency relief today, the Court's order is emphatic in making clear that it cannot be understood as sustaining the constitutionality of the law at issue. But although the Court does not address the constitutionality of this law, it can of course promptly do so when that question is properly presented. At such time the question could be decided after full briefing and oral argument, with consideration of whether interim relief is appropriate should enforcement of the law be allowed below.

Justice Breyer, with whom Justice Sotomayor and Justice Kagan join, dissenting.

The procedural posture of this case leads a majority of this Court to deny the applicants' request for provisional relief. In my view, however, we should grant that request.

I agree with THE CHIEF JUSTICE, JUSTICE SOTOMAYOR, and JUSTICE KAGAN. Texas's law delegates to private individuals the power to prevent a woman from obtaining an abortion during the first stage of pregnancy. But a woman has a federal constitutional right to obtain an abortion during that first stage. *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, 846 (1992); *Roe* v. *Wade*, 410 U. S. 113, 164 (1973). And a "State cannot delegate . . . a veto power [over the right to obtain an abortion] which the state itself is absolutely and totally prohibited from exercising during the first trimester of pregnancy." *Planned Parenthood of Central Mo.* v. *Danforth*, 428 U. S. 52, 69 (1976) (internal quotation marks omitted). Indeed, we have made clear that "since the State cannot regulate or proscribe abortion during the first stage . . . the State cannot delegate authority to any particular person . . . to prevent abortion during that same period." *Ibid.* The applicants persuasively argue that Texas's law does precisely that.

The very bringing into effect of Texas's law may well threaten the applicants with imminent and serious harm. One of the clinic applicants has stated on its website that "[d]ue to Texas' SB 8 law," it is "unable to provide abortion procedures at this time." Planned Parenthood South Texas, https://www.plannedparenthood.org/planned-parenthood-south-texas. And the applicants, with supporting affidavits, claim that clinics will be unable to run the financial and other risks that come from waiting for a private person to sue them under the Texas law; they will simply close, depriving care to more than half the women seeking abortions in Texas clinics. See, *e. g.*, App. to Application 105, 148–150, 178–179. We have permitted those whom a law threatens with constitutional harm to bring pre-enforcement challenges to the law where the harm is less serious and the threat of enforcement less certain than the harm (and the threat) here. See *Virginia* v. *American Booksellers Assn., Inc.*, 484 U. S. 383, 392–393 (1988); *Babbitt* v. *Farm Workers*, 442 U. S. 289, 298 (1979); see also *Susan B. Anthony List* v. *Driehaus*, 573 U. S. 149, 164 (2014) (finding substantial threat of future enforcement where statute permits " 'any person' " to file a complaint and "the universe of potential complainants is not restricted").

I recognize that Texas's law delegates the State's power to prevent abortions not to one person (such as a district attorney) or to a few persons (such as a group of government officials or private citizens) but to any person. But I do not see why that fact should make a critical legal difference. That delegation still threatens to invade a constitutional right, and the coming into effect of that delegation still threatens imminent harm. Normally, where a legal right is " 'invaded,' " the law provides " 'a legal remedy by suit or action at law.' " *Marbury* v. *Madison*, 1 Cranch 137, 163 (1803) (quoting 3 W. Blackstone, Commentaries *23). It should prove possible to apply procedures adequate to that task here, perhaps by permitting lawsuits against a subset of delegatees (say, those particularly likely to exercise the delegated powers), or perhaps by permitting lawsuits against officials whose actions are necessary to implement the statute's enforcement powers. There may be other not-very-new procedural bottles that can also adequately hold what is, in essence, very old and very important legal wine: The ability to ask the Judiciary to protect an individual from the invasion of a constitutional right—an invasion that threatens immediate and serious injury.

As THE CHIEF JUSTICE writes, this Court should not permit the law to take effect without assuring the applicants (and the respondents) an opportunity first and fully to make (or to refute) these and other arguments supporting the request for an injunction.

For these reasons, and for the reasons stated by THE CHIEF JUSTICE, JUSTICE SOTOMAYOR, and JUSTICE KAGAN, I dissent.

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

The Court's order is stunning. Presented with an application to enjoin a flagrantly unconstitutional law engineered to prohibit women from exercising their constitutional rights and evade judicial scrutiny, a majority of Justices have opted to bury their heads in the sand. Last night, the Court silently acquiesced in a State's enactment of a law that flouts nearly 50 years of federal precedents. Today, the Court belatedly explains that it declined to grant relief because of procedural complexities of the State's own invention. *Ante,* at 976. Because the Court's failure to act rewards tactics designed to avoid judicial review and inflicts significant harm on the applicants and on women seeking abortions in Texas, I dissent.

In May 2021, the Texas Legislature enacted S. B. 8 (the Act). The Act, which took effect statewide at midnight on September

1, makes it unlawful for physicians to perform abortions if they either detect cardiac activity in an embryo or fail to perform a test to detect such activity. § 3 (to be codified at Tex. Health & Safety Code Ann. §§ 171.201(1), 171.204(a) (West 2021)). This equates to a near-categorical ban on abortions beginning six weeks after a woman's last menstrual period, before many women realize they are pregnant, and months before fetal viability. According to the applicants, who are abortion providers and advocates in Texas, the Act immediately prohibits care for at least 85% of Texas abortion patients and will force many abortion clinics to close.

The Act is clearly unconstitutional under existing precedents. See, *e. g., June Medical Services L. L. C.* v. *Russo*, 591 U. S. 299, 347–348 (2020) (ROBERTS, C. J., concurring in judgment) (explaining that "the State may not impose an undue burden on the woman's ability to obtain an abortion" of a "nonviable fetus" (citing *Roe* v. *Wade*, 410 U. S. 113 (1973), and *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833 (1992); internal quotation marks omitted)). The respondents do not even try to argue otherwise. Nor could they: No federal appellate court has upheld such a comprehensive prohibition on abortions before viability under current law.

The Texas Legislature was well aware of this binding precedent. To circumvent it, the legislature took the extraordinary step of enlisting private citizens to do what the State could not. The Act authorizes any private citizen to file a lawsuit against any person who provides an abortion in violation of the Act, "aids or abets" such an abortion (including by paying for it) regardless of whether they know the abortion is prohibited under the Act, or even intends to engage in such conduct. § 3 (to be codified at Tex. Health & Safety Code Ann. § 171.208). Courts are required to enjoin the defendant from engaging in these actions in the future and to award the private-citizen plaintiff at least $10,000 in "statutory damages" for each forbidden abortion performed or aided by the defendant. *Ibid.* In effect, the Texas Legislature has deputized the State's citizens as bounty hunters, offering them cash prizes for civilly prosecuting their neighbors' medical procedures.

The legislature fashioned this scheme because federal constitutional challenges to state laws ordinarily are brought against state officers who are in charge of enforcing the law. See, *e. g., Vir-*

ginia Office for Protection and Advocacy v. *Stewart*, 563 U. S. 247, 254 (2011) (citing *Ex parte Young*, 209 U. S. 123 (1908)). By prohibiting state officers from enforcing the Act directly and relying instead on citizen bounty hunters, the legislature sought to make it more complicated for federal courts to enjoin the Act on a statewide basis.

Taken together, the Act is a breathtaking act of defiance—of the Constitution, of this Court's precedents, and of the rights of women seeking abortions throughout Texas. But over six weeks after the applicants filed suit to prevent the Act from taking effect, a Fifth Circuit panel abruptly stayed all proceedings before the District Court and vacated a preliminary injunction hearing that was scheduled to begin on Monday. The applicants requested emergency relief from this Court, but the Court said nothing. The Act took effect at midnight last night.*

Today, the Court finally tells the Nation that it declined to act because, in short, the State's gambit worked. The structure of the State's scheme, the Court reasons, raises "complex and novel antecedent procedural questions" that counsel against granting the application, *ante*, at 976, just as the State intended. This is untenable. It cannot be the case that a State can evade federal judicial scrutiny by outsourcing the enforcement of unconstitu-

*The Court's inaction has had immediate impact. Two hours before the Act took effect, one applicant reported that its waiting rooms were " 'filled with patients' " urgently seeking care while " 'protesters [we]re outside, shining lights on the parking [lot].' " De Vogue, Texas 6-Week Abortion Ban Takes Effect After Supreme Court Inaction, CNN (Sept. 1, 2021), www.cnn.com/2021/09/01/politics/texas-abortion-supreme-court-sb8-roe-wade/index.html. Then, at midnight, the Act became law, and many abortion providers, including applicants, ceased providing abortion care after more than six weeks from a woman's last menstrual period (LMP). See, *e. g.*, Alamo Women's Reproductive Care (Sept. 1, 2021), https://alamowomensclinic.com ("We cannot provide abortion services to anyone with detectable embryonic or fetal cardiac activity[,] which is typically found at 6 weeks or more from last menstrual period"); Southwestern Women's Surgery Center (Sept. 1, 2021), https://southwesternwomens.com/southwestern-womens-surgery-center-dallas-texas/ ("In compliance with Texas Senate Bill 8 of 2021, starting on September 1st 2021, our facility cannot provide abortions to patients with detectible embryonic or fetal cardiac activity, which typically starts at 6 weeks LMP"). Since then, at least one applicant has stopped providing abortions entirely. Planned Parenthood South Texas (Sept. 1, 2021), https://www.plannedparenthood.org/planned-parenthood-south-texas ("Due to Texas' SB 8 law, we are unable to provide abortion procedures at this time").

tional laws to its citizenry. Moreover, the District Court held this case justiciable in a thorough and well-reasoned opinion after weeks of briefing and consideration. 556 F. Supp. 3d 595, 610–633 (WD Tex. 2021). At a minimum, this Court should have stayed implementation of the Act to allow the lower courts to evaluate these issues in the normal course. *Ante*, at 977 (ROBERTS, C. J., dissenting). Instead, the Court has rewarded the State's effort to delay federal review of a plainly unconstitutional statute, enacted in disregard of the Court's precedents, through procedural entanglements of the State's own creation.

The Court should not be so content to ignore its constitutional obligations to protect not only the rights of women, but also the sanctity of its precedents and of the rule of law.

I dissent.

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

Without full briefing or argument, and after less than 72 hours' thought, this Court greenlights the operation of Texas's patently unconstitutional law banning most abortions. The Court thus rewards Texas's scheme to insulate its law from judicial review by deputizing private parties to carry out unconstitutional restrictions on the State's behalf. As of last night, and because of this Court's ruling, Texas law prohibits abortions for the vast majority of women who seek them—in clear, and indeed undisputed, conflict with *Roe* and *Casey*.

Today's ruling illustrates just how far the Court's "shadow-docket" decisions may depart from the usual principles of appellate process. That ruling, as everyone must agree, is of great consequence. Yet the majority has acted without any guidance from the Court of Appeals—which is right now considering the same issues. It has reviewed only the most cursory party submissions, and then only hastily. And it barely bothers to explain its conclusion—that a challenge to an obviously unconstitutional abortion regulation backed by a wholly unprecedented enforcement scheme is unlikely to prevail. In all these ways, the majority's decision is emblematic of too much of this Court's shadow-docket decisionmaking—which every day becomes more unreasoned, inconsistent, and impossible to defend. I respectfully dissent.

SEPTEMBER 8, 2021

Certiorari Granted

No. 21–5592 (21A33). RAMIREZ *v.* COLLIER, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, granted. Motion for leave to proceed *in forma pauperis* granted. Certiorari granted. The Clerk is directed to establish a briefing schedule that will allow the case to be argued in October or November 2021. Reported below: 10 F. 4th 561.

SEPTEMBER 10, 2021

Dismissals Under Rule 46

No. 20–1519. RIVERA *v.* GELABERT-DE-PEGUERO ET AL. C. A. 1st Cir. Certiorari dismissed under this Court's Rule 46.

No. 21–186. OKLAHOMA *v.* BOSSE. Ct. Crim. App. Okla. Certiorari dismissed under this Court's Rule 46. Reported below: 2021 OK CR 3, 484 P. 3d 286.

Miscellaneous Orders

No. 20–219. CUMMINGS *v.* PREMIER REHAB KELLER, P. L. L. C. C. A. 5th Cir. [Certiorari granted, 594 U. S. 952.] Motion of petitioner to dispense with printing joint appendix granted.

No. 21–5592. RAMIREZ *v.* COLLIER, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. [Certiorari granted, 594 U. S. 983.] The parties are directed to submit briefs that address whether petitioner adequately exhausted his audible prayer claim under the Prison Litigation Reform Act, 42 U. S. C. § 1997e(a). The parties are also directed to address whether petitioner has satisfied his burden under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) to demonstrate that a sincerely held religious belief has been substantially burdened by restrictions on either audible prayer or physical contact. The parties are further directed to address whether the government has satisfied its burden under RLUIPA to demonstrate its policy is the least restrictive means of advancing a compelling government interest. Finally, the parties are directed to address the type of equitable relief petitioner is seeking, the appropriate standard for this relief, and whether that standard has been met here. See *Hill* v. *McDonough*, 547 U. S. 573, 584 (2006) (setting forth a four-factor test for equitable relief). The parties may address other relevant issues, avoiding repetition of discussion in prior briefing.

Rehearing Denied

No. 20–298. El Paso County, Texas, et al. *v.* Biden, President of the United States, et al., 594 U. S. 953;

No. 20–1473. Crittenden *v.* Crittenden, 594 U. S. 928;

No. 20–1500. Siberius *v.* American Public University System, Inc., et al., 594 U. S. 908;

No. 20–7624. Martin *v.* United States, 593 U. S. 968;

No. 20–7653. Denton *v.* Davids, Warden, 593 U. S. 1035;

No. 20–7671. Johnson *v.* Schmidt, Attorney General of Kansas, et al., 593 U. S. 1028;

No. 20–7728. Smeaton *v.* United States, 593 U. S. 994;

No. 20–7835. Cooper *v.* Florida, 594 U. S. 931;

No. 20–7873. McBride *v.* Zatecky, Superintendent, Pendleton Correctional Facility, 593 U. S. 1037;

No. 20–7994. In re Scott, 593 U. S. 1031;

No. 20–8017. Brenham *v.* Kemp et al., 594 U. S. 932;

No. 20–8052. Quiroz *v.* United States, 593 U. S. 1049; and

No. 20–8137. McRae *v.* Harrison, Sheriff, Wake County, North Carolina, 594 U. S. 933. Petitions for rehearing denied.

No. 20–7077. Brown *v.* United States, 594 U. S. 919. Petition for rehearing denied. Justice Kagan took no part in the consideration or decision of this petition.

September 13, 2021

Dismissal Under Rule 46

No. 20–1172. Ponik et al. *v.* Williams, Individually and as Administratrix ad Prosequendum of the Estate of Williams, Deceased, et al. C. A. 3d Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 822 Fed. Appx. 108.

September 17, 2021

Dismissal Under Rule 46

No. 21–5148. Dew *v.* Eppinger, Warden. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 46.

SEPTEMBER 23, 2021

Dismissal Under Rule 46

No. 20–1324. McMANEMY *v.* TIERNEY ET AL. C. A. 8th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 970 F. 3d 1034.

SEPTEMBER 24, 2021

Dismissal Under Rule 46

No. 20–1483. PILEVSKY ET AL. *v.* SUTTON 58 ASSOCIATES LLC. Ct. App. N. Y. Certiorari dismissed under this Court's Rule 46. Reported below: 36 N. Y. 3d 297, 164 N. E. 3d 984.

SEPTEMBER 28, 2021

Miscellaneous Order

No. 21A43. RHOADES *v.* MARTINEZ, JUDGE. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied.

SEPTEMBER 29, 2021

Dismissal Under Rule 46

No. 20–794. SERVOTRONICS, INC. *v.* ROLLS-ROYCE PLC ET AL. C. A. 7th Cir. [Certiorari granted, 592 U. S. 1317.] Writ of certiorari dismissed under this Court's Rule 46.

SEPTEMBER 30, 2021

Miscellaneous Orders

No. 20–637. HEMPHILL *v.* NEW YORK. Ct. App. N. Y. [Certiorari granted, 593 U. S. 926.] Motion of Adam Oustatcher for leave to file brief as *amicus curiae* denied.

No. 20–659. THOMPSON *v.* CLARK ET AL. C. A. 2d Cir. [Certiorari granted, 592 U. S. 1308.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted, and the time is allotted as follows: 20 minutes for petitioner, 15 minutes for the Acting Solicitor General, and 30 minutes for respondents.

Probable Jurisdiction Postponed

No. 21–12. FEDERAL ELECTION COMMISSION *v.* TED CRUZ FOR SENATE ET AL. Appeal from D. C. D. C. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Reported below: 542 F. Supp. 3d 1.

Certiorari Granted

No. 20–1472. Boechler, P. C. *v.* Commissioner of Internal Revenue. C. A. 8th Cir. Certiorari granted. Reported below: 967 F. 3d 760.

No. 20–1566. Cassirer et al. *v.* Thyssen-Bornemisza Collection Foundation. C. A. 9th Cir. Certiorari granted. Reported below: 824 Fed. Appx. 452.

No. 20–1650. Concepcion *v.* United States. C. A. 1st Cir. Certiorari granted. Reported below: 991 F. 3d 279.

No. 20–1800. Shurtleff et al. *v.* City of Boston, Massachusetts, et al. C. A. 1st Cir. Certiorari granted. Reported below: 986 F. 3d 78.