(ORDER LIST: 583 U.S.)

MONDAY, MARCH 19, 2018

ORDERS IN PENDING CASES

17A838 TIMBES, PAMELA M. V. DEUTSCHE BANK, ET AL.

The application for stay addressed to Justice Sotomayor and referred to the Court is denied.

17M87 GENTRY, JOHN A. V. THOMPSON, JOE H.

17M88 GENTRY, JOHN A. V. TENNESSEE, ET AL.

The motions of petitioner for leave to proceed as a veteran are denied.

17M89 NWAUBANI, CHIDIEBERE V. GROSSMAN, DIVINA, ET AL.

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

17M90 GRIFFIN, TRENT S. V. AMERICAN ZURICH INS., ET AL.

The motion of petitioner for leave to proceed as a veteran is denied.

17M91 CURRAN, JOHN F. V. UNITED STATES

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

17-269 WASHINGTON V. UNITED STATES, ET AL.

The motion of Washington State Association of Counties and Association of Washington Cities for leave to file a brief as *amici curiae* is granted.

17-667 PIONEER CENTRES HOLDING, ET AL. V. ALERUS FINANCIAL

The Solicitor General is invited to file a brief in this case expressing the views of the United States.

17-7476 JUNGWIRTH, SARAH E. V. LEE, WEN-HSIEN H.

17-7692 STONE, JOANNE V. LA DEPT. OF REVENUE

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until April 9, 2018, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

CERTIORARI GRANTED

16-1363 NIELSEN, SEC. OF HOMELAND, ET AL. V. PREAP, MONY, ET AL.

The petition for a writ of certiorari is granted.

CERTIORARI DENIED

16-1180 BREWER, GOV. OF AZ, ET AL. V. AZ DREAM ACT COALITION, ET AL.

17-473 NOONAN, THOMAS D. V. COUNTY OF OAKLAND, MI, ET AL.

17-550 WIERSZEWSKI, EDWARD V. THIBAULT, ALAN

17-630 KARBAN, ROBERT V. UNITED STATES

17-663 GREEN SOLUTION RETAIL, ET AL. V. UNITED STATES, ET AL.

17-666) WRIGHT, JEFF V. MAYS, MELISSA, ET AL.
)
17-901) WYANT, DANIEL, ET AL. V. MAYS, MELISSA, ET AL.
)
17-989) FLINT, MI, ET AL. V. BOLER, BEATRICE, ET AL.

17-669 WILCOXSON, HARRY V. UNITED STATES

17-696 GONZALEZ-BADILLO, ALEXIS V. UNITED STATES

17-706 LOWRY, SARA V. SAN DIEGO, CA

17-722 GUERRA, JOE A., ET AL. V. BELLINO, FRANK

17-729 YUKINS, WARDEN V. TANNER, HATTIE

17-736 BLATT, HASENMILLER, LEIBSKER LLC V. OLIVA, RONALD

17-747 TEVA PHARMACEUTICALS USA, INC. V. WENDELL, STEPHEN, ET UX.

17-776 LOS ANGELES, CA, ET AL. V. BREWSTER, LAMYA

17-779 PARKER, JASON V. MONTGOMERY COUNTY CORR., ET AL.

17-781 ASBOTH, KENNETH M. V. WISCONSIN

17-803 SANDUSKY WELLNESS CENTER V. ASD SPECIALTY HEALTHCARE

17-842 BELLEVUE, GEORGE V. UNIVERSAL HEALTH SERVICES, INC.

17-863) FIRST AGENCY, INC., ET AL. V. DAKOTAS AND WESTERN MINNESOTA
)
17-1008) DAKOTAS AND WESTERN MINNESOTA V. FIRST AGENCY, INC., ET AL.

17-872 WALKER, BRUCE V. ESTATE OF RYAN L. CLARK

17-918 LUSSY, RICHARD C. V. CIR

17-934 PENUNURI, LISA, ET AL. V. REDFORD, ROBERT, ET AL.

17-953 WARMUS, MATTHEW V. LaROSE, WARDEN

17-957 LaVERGNE, BRANDON S. V. BRIGNAC, TRENT, ET AL.

17-967 McMASTER, JAMES M., ET UX. V. BENSALEM, PA

17-972 NORDYKE, MICHAEL V. HOWMEDICA OSTEONICS CORP.

17-973 McGEEHAN, ANN V. McGEEHAN, MICHAEL

17-974 OZFIDAN, OSCAR O. V. OZFIDAN, PAMELA L.

17-978 ROBERTSON, DUNCAN K. V. GMAC MORTGAGE, LLC, ET AL.

17-985 TRIVEDI, MADHURI V. DEPT. OF HOMELAND SEC., ET AL.

17-996 BOGGALA, VIJAYA P. V. SESSIONS, ATT'Y GEN.

17-1006 LAITY, ROBERT C. V. NEW YORK, ET AL.

17-1012 CHIARENZA, JOHN V. FLORIDA

17-1013 SAMPSON, FRANCIS J. V. U.S. BANK N.A.

17-1023 BANNER HEALTH, ET AL. V. AZAR, SEC. OF H&HS

17-1027 UNITED STATES, EX REL. LITTLE V. TRIUMPH GEAR SYSTEMS, INC.

17-1029 SHESHTAWY, VALENTINA, ET AL. V. GRAY, J. CARY, ET AL.

17-1037 MIRENA MDL, ET AL. V. BAYER HEALTHCARE, ET AL.

17-1046 PIECZENIK, GEORGE V. NJ DEPT. OF ENVTL., ET AL.

17-1047 PERREAULT, SCOTT D. V. STEWART, WARDEN

17-1049 GURNETT, MICHAEL A. V. BARGNESI, JAMES F.

17-1065 LEE-WALKER, JEENA V. NY CITY DEPT. OF ED., ET AL.

17-1071 PAIGE, SHARON M. V. LeGAULT, REBECCA, ET AL.

17-1072 CHUDIK, STEVEN C. V. IANCU, ANDREI

17-1075 SCOPELLITI, ROSS V. TAMPA, FL

17-1102 ALLEN, JEFFREY, ET AL. V. CHICAGO, IL

17-1109 McCLAMMA, KYLE E. V. UNITED STATES

17-1112 CONNECTICUT V. TORRES, QUAVON

17-1115 MASSEY, CHARLES A. V. VIRGINIA

17-1121 ZAPPONE, TODD N., ET AL. V. UNITED STATES, ET AL.

17-1131 TAYLOR, WARREN A. V. USDC SD GA

17-1132 ROBERTS, WALTER L. V. TEXAS

17-1138 WEINGARTEN, ISRAEL V. UNITED STATES

17-1147 MANGINO, NICHOLAS V. McKENNEY, VICKI

17-6110 ROY, ALEXANDER M. V. UNITED STATES

17-6231 DOVE, DAVID D. V. LOUISIANA

17-6295 JAMES, DESHAWN K. V. UNITED STATES

17-6332 WILLIAMS, JOSEPH E. V. PASTRANA, WARDEN

17-6343 MIDDLETON, MONTAVIS V. UNITED STATES

17-6349 PEROTTI, JOHN V. UNITED STATES

17-6398 JIN, JING G. V. SESSIONS, ATT'Y GEN.

17-6399 CASTETTER, CORY S. V. UNITED STATES

17-6415 CHANDLER, ZACHARY V. UNITED STATES

17-6666 WILLIAMS, VANSTON V., ET AL. V. UNITED STATES

17-6668 WHITE, NAKEY D. V. UNITED STATES

17-6690 COX, VON S. V. UNITED STATES

17-6813 QUINTANILLA, MELISSA, ET AL. V. UNITED STATES

17-6861 MORENO, JESUS E. V. UNITED STATES

17-7099 KNIGHT, RICHARD V. FLORIDA, ET AL.

17-7257 CLABOURNE, SCOTT D. V. RYAN, DIR., AZ DOC

17-7262 SMITH, JOHN J. V. SMITH, LORA J.

17-7263 STEELE-KLEIN, MARY H. V. TEAMSTERS UNION, ET AL.

17-7279 WILLIAMS, ROOSEVELT V. DIST. ATT'Y, MONROE CTY., ET AL.

17-7280 KOLESNIK, MICHAEL V. V. WASHINGTON

17-7281 MARTINEZ, ARNALDO V. FLORIDA

17-7286 TOWNSEND, TAHREEL M. V. GILMORE, SUPT., GREENE, ET AL.

17-7288 WHIRTY, JOHN R. V. DAVIS, DIR., TX DCJ

17-7290 S. C. V. COLORADO

17-7292 SNEED, BILLY R. V. CLARKE, DIR., VA DOC

17-7311 LEWIS, KACEY V. CAVANUGH, THOMAS, ET AL.

17-7316 RIVERS, CRYSTAL V. V. SANZONE, JOSEPH A., ET AL.

17-7317 POTEAT, ANTOINE V. PENNSYLVANIA

17-7319 MOULTRIE, ANTONIO V. WILLIAMS, WARDEN

17-7328 ISAACSON, DAVID M. V. DAVIS, DIR., TX DCJ

17-7330 ACOSTA, JUAN D. V. SPEARMAN, WARDEN

17-7334 THOMAS, JOMO V. MICHIGAN

17-7337 WALKER, KEVIN V. ILLINOIS

17-7339 WIDI, DAVID J. V. NEW HAMPSHIRE

17-7345 GREEN, FELTON B. V. McGILL-JOHNSTON, DENISE, ET AL.

17-7346 FOWLER, TERRANCE V. TICE, SUPT., SMITHFIELD, ET AL.

17-7351 HAWKINS, LEE A. V. HOOKS, WARDEN

17-7352 HULLIHEN, BLAKE D. V. KLEE, WARDEN

17-7353 COOLEY, CHARLES E. V. STEWART, WARDEN, ET AL.

17-7354 HERNANDEZ, JESUS V. CALIFORNIA

17-7355 FIGUEROA, HIRAM L. V. KAUFFMAN, SUPT., HUNTINGDON

17-7357 SANCHEZ, RICARDO E. V. ALLEN, GEORGE, ET AL.

17-7360 RICHMOND, DARNELL V. ILLINOIS

17-7362 FULLER, SAMUEL L. V. MEGHEAN, RYAN

17-7365 GONZALEZ, ANGEL V. JONES, SEC., FL DOC

17-7366 HARRIS, JASON L. V. MULLINS, KAREN A., ET AL.

17-7370 FLETCHER, SAM A. V. TEXAS

17-7374 POLLARD, VURNELL D. V. MADDEN, WARDEN

17-7382 FLENTROY, CHARLIE V. TEXAS

17-7384 ROSS, JERAD V. FLEMING, WARDEN

17-7385 SCHOUENBORG, TERRENCE P. V. GRAHAM, SUPT., AUBURN

17-7392 ROCK, MARTIN E. V. DEARBORN HEIGHTS, MI

17-7394 COOK, DARYL V. PHILADELPHIA, PA, ET AL.

17-7399 HAYES, ARIKA V. VIACOM INC., ET AL.

17-7400 COVINGTON, EDWARD A. V. FLORIDA

17-7401 GUERRERO-YANEZ, JOSE A. V. TEXAS

17-7404 MUNT, JOEL M. V. USDC MN

17-7406 MIKE, GERALD V. GARMAN, SUPT., ROCKVIEW

17-7412 GRACE, QUANTRELL V. UNITED STATES

17-7416 GRAY, DEVIN V. NEW YORK

17-7418 KHATANA, DEBORAH H. V. WMATA

17-7423 JOHNSON, RYAN P. V. DAVIS, DIR., TX DCJ

17-7426 SANDERS, WILLIE V. FLORIDA

17-7428 CRESPO, BARRY V. HIGGINS, WILLIAM J., ET AL.

17-7431 WILLIAMS, ROBERT V. BLANCHARD, TIMOTHY, ET AL.

17-7434 THOMPSON, CELESTINE G. V. TEEBAGY, CHARLES, ET AL.

17-7444 MIGLIORI, JOSEPH V. MICROSOFT CORP., ET AL.

17-7445 MIGLIORI, JOSEPH V. HONEYWELL INC., ET AL.

17-7451 BARROW, MITCHELL L. V. FLORIDA

17-7454 MOORE, ROBERT V. FLORIDA

17-7467 EAVES, EDWARD V. CHARLOTTE, NC

17-7470 RIOS, SANTIAGO V. LEWIS, WARDEN

17-7483 SMITH, DONALD K. V. WOODALL, RONALD, ET AL.

17-7491 DURAN, JOSEPH A. V. KERNAN, SEC., CA DOC

17-7499 STRAW, ANDREW U. V. USDC SD IN

17-7522 JOHNSON, KATHERINE S. V. LOYOLA UNIV. OF NEW ORLEANS

17-7532 NURI, AHMED M. V. MSPB

17-7533 MILLS, ROBERT C. V. IN DEPT. OF CHILD SERVICES

17-7536 STRAW, ANDREW U. V. UNITED STATES, ET AL.

17-7550 DAVIS, EUGENE V. SPEARMAN, WARDEN

17-7556 BEGNOCHE, PAUL J. V. DeROSE, D. L., ET AL.

17-7590 WILSON, JERRY V. UNITED STATES

17-7600 BASKIN, BENTON G. V. KANSAS

17-7610 GRAY, KUNTA V. ZATECKY, SUPT., PENDLETON

17-7619 PIERRE, ARTHUR J. V. UNITED STATES

17-7621 LILLEY, MICHAEL A. V. UNITED STATES

17-7622 SCOTT, ERIC B. V. GEORGIA

17-7623 GUTIERREZ, MIGUEL A. V. UNITED STATES

17-7624 CASCIOLA, PHILLIP V. FLORIDA

17-7652 JONES, GLEN T. V. JONES, SEC., FL DOC, ET AL.

17-7658 WATKINS, NAPOLEAN V. NAPEL, WARDEN

17-7674 LUGO-DIAZ, DEAN V. UNITED STATES

17-7677 RHODES, WILLIAM L. V. UNITED STATES

17-7679 MENDOZA-ROMERO, JAVIER G. V. UNITED STATES

17-7681 CASTRO, JUAN M. V. UNITED STATES

17-7682 PADILLA-DIAZ, ARMANDO, ET AL. V. UNITED STATES

17-7684 DRIVER, GORDON V. UNITED STATES

17-7686 RELIFORD, DARIEN L. V. UNITED STATES

17-7687 SCHWARTZ, THOMAS W. V. UNITED STATES

17-7695 MARION, ISAAC V. UNITED STATES

17-7697 SALOMON-MACIAS, MARCO V. UNITED STATES

17-7698 ARIAS, YANNIER V. UNITED STATES

17-7700 BOLTON, BRAD V. UNITED STATES

17-7704 SCOTT, FLOYD D. V. PALMER, J., ET AL.

17-7706 RIGGINS, BRIAN V. UNITED STATES

17-7711 CASTILLEJA-LIMON, DIEGO A. V. UNITED STATES

17-7712 ELLIS, JEFFREY B. V. UNITED STATES

17-7713 DANIELS, MAURICE V. UNITED STATES

17-7714 MARTIN, JEREMY R. V. UNITED STATES

17-7718 REA-PONCE, HECTOR A. V. UNITED STATES

17-7719 PEREZ, JAVIER V. UNITED STATES

17-7721 LESPIER, JAMES E. V. UNITED STATES

17-7722 JACKSON, MELVIN V. UNITED STATES

17-7723 JACKSON, YAHKI J. V. UNITED STATES

17-7725 FIERRO, DAVID V. MUNIZ, WARDEN

17-7726 HAMLIN, TERRANCE D. V. UNITED STATES

17-7728 RICHARDSON, PAUL V. UNITED STATES

17-7729 SCHENCK, PHILLIP V. UNITED STATES

17-7730 SULLIVAN, CYRUS A. V. UNITED STATES

17-7736 STEWART, PHILLIP D. V. OTTS, FREDDIE, ET AL.

17-7737 WATKINS, JOHN V. UNITED STATES

17-7739 DELVA, DAVID V. UNITED STATES

17-7740 DUVAL, JEAN E. V. UNITED STATES

17-7741 WOODLEY, BIJAN V. UNITED STATES

17-7743 JOHNSTON, BRYAN R. V. MITCHELL, SUPT., OLD COLONY

17-7744 TATE, IVAN T. V. FLORIDA

17-7745 R. D. V. TX DEPT. OF FAMILY

17-7748 THOMAS, ANTHONY L. V. UNITED STATES

17-7749 WASHPUN, CHARLES V. UNITED STATES

17-7750 SHAHEED, SALAHUDIN V. UNITED STATES

17-7751 EPPERSON, KEVIN V. DELAWARE

17-7757 STINE, MIKEAL G. V. UNITED STATES

17-7760 JENKINS, TERRANCE M. V. MISSISSIPPI

17-7761 JEFFERSON, WILLIE V. UNITED STATES

17-7764 PICKETT, JACOBI V. UNITED STATES

17-7765 HARLING, BRIAN V. UNITED STATES

17-7768 CLARK, DARREN N. V. JONES, SEC., FL DOC

17-7770 GODINEZ-MARTINEZ, JUAN V. UNITED STATES

17-7771 HOWARD, DARYON B. V. UNITED STATES

17-7772 HERRERA, CHRISTOPHER B. V. CALIFORNIA

17-7782 PURRY, EDWARD J. V. UNITED STATES

17-7783 PEDRAZA, ISAI V. UNITED STATES

17-7786 SIMPSON, KENNETH R. V. UNITED STATES

17-7788 ROBINSON, EDRIC N. V. UNITED STATES

17-7791 MAYHEW, DAVID C. V. UNITED STATES

17-7798 CHARTER, JOSHUA D. V. UNITED STATES

17-7803 McCRAY, MOSES V. FLORIDA

17-7808 FRIAL-CARRASCO, LUCILLE V. UNITED STATES

17-7810 DORSEY, MICK V. DEPT. OF EDUCATION, ET AL.

17-7819 TOLENTINO, JUAN V. UNITED STATES

17-7849 MERRITT, KENGI N. V. JONES, SEC., FL DOC, ET AL.

17-7872 COTTON, JAMES V. ILLINOIS

17-7888 SHIPLEY, BONNIE V. STUBBLEFIELD PROPERTIES

The petitions for writs of certiorari are denied.

17-659 ALL NIPPON AIRWAYS, ET AL. V. WORTMAN, DANIEL, ET AL.

The petition for a writ of certiorari is denied. Justice

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

17-678 BELL, HAROLD E. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Gorsuch took no part in the consideration or decision of this petition.

17-962 BOYD, ANTHONY V. DUNN, COMM'R, AL DOC, ET AL.

The petition for a writ of certiorari is denied. Justice Sotomayor dissenting from the denial of certiorari: I dissent from the denial of certiorari for the reasons set out in *Arthur* v. *Dunn*, 580 U. S. _____ (2017) (SOTOMAYOR, J., dissenting from denial of certiorari).

17-983 DONJUAN-LAREDO, CARLOS I. V. SESSIONS, ATT'Y GEN.

The petition for a writ of certiorari is denied. Justice Gorsuch took no part in the consideration or decision of this petition.

17-1030 SPEEDWAY LLC, ET AL. V. WILSON, ZACHARY, ET AL.

The motion of Center for Constitutional Jurisprudence for leave to file a brief as *amicus curiae* is granted. The motion of National Conference on Weights and Measures for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied. Justice Alito and Justice Gorsuch took no part in the consideration or decision of these motions and this petition.

17-1033 BAIUL, OKASANA, ET AL. V. NBC SPORTS

The motion of Reiter, Dye & Brennan, LLP, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

17-7377 PARTIN, STACY V. TILFORD, RON H.

The motion of respondent to substitute Rose M. Tilford, Executrix of the Estate of Ron H. Tilford as respondent in place of Ron H. Tilford, Deceased is granted. The petition for a writ of certiorari is denied.

17-7403 HOLMES, JOEL C. V. DON KENNEDY PROPERTIES

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the 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*).

17-7660 YOUNGE, EGLAN V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Kagan took no part in the consideration or decision of this petition.

17-7701 AGUILERA, MAURICIO V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Breyer took no part in the consideration or decision of this petition.

17-7709 ALCORTA, RAYMOND V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Gorsuch took no part in the consideration or decision of this petition.

17-7720 DERROW, MICHAEL J. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Kagan took no part in the consideration or decision of this petition.

17-7727 HARDY, DAMION V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Sotomayor took no part in the consideration or decision of this petition.

17-7763 CROWE, VICKI D. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Gorsuch took no part in the consideration or decision of this petition.

17-7767 KAPORDELIS, GREGORY C. V. FOX, WARDEN

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). Justice Kagan took no part in the consideration or decision of this motion and this petition.

17-7780 LOCASCIO, FRANK V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Sotomayor took no part in the consideration or decision of this petition.

HABEAS CORPUS DENIED

17-1171 IN RE EDWIN F. REILLY

17-7755 IN RE NORMAN S. SHINSAKO

17-7818 IN RE CARLTON WEST, II

17-7830 IN RE VINCENT W. ALDRIDGE, ET UX.

17-7886 IN RE ALLEN F. CALTON

17-7887 IN RE JAMES RUDNICK

17-7902 IN RE JOHN P. ALEXANDER

17-7906 IN RE FREDERICK WEBSTER

The petitions for writs of habeas corpus are denied.

MANDAMUS DENIED

17-7349 IN RE ERIC DRAKE

17-7393 IN RE MICHAEL J. ROTONDO

The petitions for writs of mandamus are denied.

17-7338 IN RE CHRISTOPHER W. WEBB

The petition for a writ of mandamus and/or prohibition is denied.

REHEARINGS DENIED

17-597 CLEMONS, CARLOS V. DELTA AIRLINES, INC.

17-655 ALI, MUSSA V. CARNEGIE INSTITUTION, ET AL.

17-725 BEAVERS, JUSTIN V. KERN CTY. CHILD SUPPORT SERVICES

17-797 COOKE, RONALD N. V. VIRGINIA

17-5507 ACKBAR, SUPREME R. V. McPHERSON, LIEUTENANT, ET AL.

17-5585 IN RE KERRY SANDERS

17-5758 HINSON-BEY, MERVIN V. ALBERMARLE POLICE DEPT., ET AL.

17-6205 BLYDEN, JEROME V. UNITED STATES

17-6335 MATELYAN, ARIKA V. ASCAP, ET AL.

17-6370 WILLIAMS, BOBBY O. V. LASHBROOK, WARDEN

17-6472 IN RE JEFFREY A. WEEKLEY

17-6522 LUCAS, CHRISTINE M. V. WARD, CARRIE, ET AL.

17-6547 H. K. V. V. FL. DEPT. OF CHILDREN, ET AL.

17-6553 GLICK, RON D. V. TOWNSEND, ANGELA J., ET AL.

17-6621 WATSON, CARMEN N. V. MYLAN PHARMACEUTICALS, INC.

17-6770 STEVENSON, DAIMEYAHN V. VANNOY, WARDEN

17-6874 KING, GARY D. V. BERRY, WARDEN

17-6894 WATERS, THOMAS B. V. UNITED STATES

17-6901 CHAPPELL, RONALD V. MORGAN, WARDEN

17-6939 IN RE MASAO YONAMINE

17-7005 FAIRLEY, JULIETTE V. FAIRLEY, MAURICETTE, ET AL.

17-7116 OKEAYAINNEH, JULIAN V. UNITED STATES

The petitions for rehearing are denied.

SUPREME COURT OF THE UNITED STATES

ABEL DANIEL HIDALGO *v.* ARIZONA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

No. 17–251. Decided March 19, 2018

The petition for a writ of certiorari is denied.

Statement of JUSTICE BREYER, with whom JUSTICE GINSBURG, JUSTICE SOTOMAYOR, and JUSTICE KAGAN join, respecting the denial of certiorari.

The petition in this capital case asks an important Eighth Amendment question:

> "Whether Arizona's capital sentencing scheme, which includes so many aggravating circumstances that virtually every defendant convicted of first-degree murder is eligible for death, violates the Eighth Amendment." Pet. for Cert. (i).

I

"Our capital punishment cases under the Eighth Amendment address two different aspects of the capital decisionmaking process: the eligibility decision and the selection decision." *Tuilaepa* v. *California*, 512 U. S. 967, 971 (1994). States must comply with requirements for each decision. See *Kansas* v. *Marsh*, 548 U. S. 163, 173–174 (2006) ("Together, our decisions in *Furman* v. *Georgia*, 408 U. S. 238 (1972) (*per curiam*), and *Gregg* v. *Georgia*, 428 U. S. 153 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.), establish that a state capital sentencing scheme must" comport with requirements for each decision).

In respect to the first, the "eligibility decision," our precedent imposes what is commonly known as the "narrowing" requirement. "To pass constitutional muster, a

capital sentencing scheme must 'genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder.'" *Lowenfield* v. *Phelps*, 484 U. S. 231, 244 (1988) (quoting *Zant* v. *Stephens*, 462 U. S. 862, 877 (1983)). To satisfy the "narrowing requirement," a state *legislature* must adopt "*statutory factors* which determine death eligibility" and thereby "limit the class of murderers to which the death penalty may be applied." *Brown* v. *Sanders*, 546 U. S. 212, 216, and n. 2 (2006) (emphasis added); see also *Tuilaepa*, *supra*, at 979 ("'Once the jury finds that the defendant falls within the *legislatively* defined category of persons eligible for the death penalty, . . . the jury then is free to consider a myriad of factors to determine whether death is the appropriate punishment'" (quoting *California* v. *Ramos*, 463 U. S. 992, 1008 (1983); emphasis added)); *Lowenfield*, *supra*, at 246 (specifying that the "*legislature*" may provide for the "narrowing function" by statute (emphasis added)); *Zant*, *supra*, at 878 ("*[S]tatutory* aggravating circumstances play a constitutionally necessary function at the stage of *legislative* definition: they circumscribe the class of persons eligible for the death penalty" (emphasis added)).

The second aspect of the capital decisionmaking process, the "selection decision," determines whether a death-eligible defendant should actually receive the death penalty. *Tuilaepa*, *supra*, at 972. In making this individualized determination, the jury must "consider relevant mitigating evidence of the character and record of the defendant and the circumstances of the crime." *Ibid.*; see also *Marsh*, *supra*, at 173–174 ("[A] state capital sentencing system must . . . permit a jury to render a reasoned, individualized sentencing determination based on a death-eligible defendant's record, personal characteristics, and the circumstances of his crime"). This second aspect of the capi-

tal punishment decision—the selection requirement—is not before us.

II

Our precedent makes clear that the legislature may satisfy the "narrowing function . . . in either of . . . two ways." *Lowenfield*, 484 U. S., at 246. First, "[t]he legislature may itself *narrow the definition of capital offenses* . . . ." *Ibid*. (emphasis added). Second, "the legislature may more broadly define capital offenses," but set forth by statute "aggravating circumstances" which will permit the "jury . . . at the penalty phase" to make "findings" that will narrow the legislature's broad definition of the capital offense. *Ibid*.; see also *Tuilaepa*, *supra*, at 972 ("The aggravating circumstance may be contained in the definition of the crime or in a separate sentencing factor (or in both)"). The petitioner here, Abel Daniel Hidalgo, contends that the Arizona Legislature has failed to satisfy the narrowing requirement through either of these two methods.

A

Consider the first way a state legislature may satisfy the Constitution's narrowing requirement—namely, by enacting a narrow statutory definition of capital murder. Some States have followed this approach. For example, in *Lowenfield*, this Court upheld Louisiana's use of this method because it concluded that the State's capital murder statute narrowed the class of intentional murderers to a smaller class of death-eligible murderers. 484 U. S., at 246. Specifically, Louisiana's capital murder statute was limited to cases in which "'the offender'" not only had "'specific intent to kill or to inflict great bodily harm'" but also (1) targeted one of three specifically enumerated categories of victims (children, "'a fireman or peace officer engaged'" in "'lawful duties,'" or multiple victims); or (2)

was "'engaged in the perpetration or attempted perpetration of'" certain other serious specified crimes; or (3) was a murder-for-hire. *Id.*, at 242 (quoting La. Rev. Stat. Ann. §§14:30(A)(1)–(5) (West 1986)). The *Lowenfield* Court also noted that Texas' capital murder statute "narrowly defined the categories of murder for which a death sentence could be imposed." 484 U. S., at 245; see also *Jurek* v. *Texas*, 428 U. S. 262, 271 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.) (upholding the Texas capital murder statute, which made "a smaller class of murders in Texas" death eligible).

Unlike the Louisiana and Texas statutes, Arizona's capital murder statute makes all first-degree murderers eligible for death and defines first-degree murder broadly to include all premeditated homicides along with felony murder based on 22 possible predicate felony offenses. See Ariz. Rev. Stat. Ann. §§13–1105(A)(1)–(2) (2010) (including, for example, transporting marijuana for sale). Perhaps not surprisingly, Arizona did not argue below and does not suggest now that the State's first-degree murder statute alone can meet the Eighth Amendment's narrowing requirement.

B

Because Arizona law broadly defines capital murder, the State has sought to comply with the narrowing requirement through the second method—namely, by setting forth statutory "aggravating circumstances" designed to permit the "jury . . . at the penalty phase" to make "findings" that will narrow the legislature's broad definition of the capital offense. *Lowenfield*, *supra*, at 246. The Arizona Legislature has set forth a list of statutory aggravating factors that the jury must consider "in determining whether to impose a sentence of death." Ariz. Rev. Stat. Ann. §13–751(F) (Cum. Supp. 2017); see Appendix, *infra*. And under Arizona law, a person convicted of first-degree

murder may be sentenced to death only if at least one of these aggravating factors is present. §13–752(E).

In this case, the petitioner sought an evidentiary hearing to establish through witnesses, expert testimony, and documentary evidence that the statutory aggravating circumstances set forth in §13–751(F) apply to virtually every first-degree murder case in the State. The state trial court consolidated the petitioner's motion for an evidentiary hearing with similar motions filed by 17 other first-degree murder defendants. See Brief in Opposition 4. Unlike the petitioner, the other defendants had committed their crimes after the Arizona Legislature increased the number of statutory aggravating factors from 10 to 14. Compare Ariz. Rev. Stat. Ann. §13–703(F) (2001) (10 aggravators) with Appendix, *infra* (14 aggravators).

In his request for a hearing, the petitioner pointed to, among other things, evidence he obtained through public records requests regarding more than 860 first-degree murder cases in Maricopa County (the county where he was charged) between 2002 and 2012. As the Arizona Supreme Court noted, this evidence indicated that "one or more aggravating circumstances were present in 856 of 866" cases examined. 241 Ariz. 543, 550, 390 P. 3d 783, 789 (2017). In other words, about 98% of first-degree murder defendants were eligible for the death penalty. The petitioner adds in his briefing before this Court that this is true under either the 10 aggravating factors in effect when he was sentenced or the 14 factors set forth under the expanded provisions Arizona has since adopted. See Reply Brief 5 (citing C. Spohn, Aggravating Circumstances in First-Degree Murder Cases, Maricopa County, AZ: 2002–2012). Narrowing an impermissibly broad capital murder statute by about 2% is not, the petitioner says, sufficient under this Court's precedents.

The state trial court denied the petitioner's request for an evidentiary hearing, and the Arizona Supreme Court

affirmed. 241 Ariz., at 548–549, 390 P. 3d, at 788–789. However, the Arizona Supreme Court did not dispute the petitioner's evidence. It assumed that "Hidalgo is right in his factual assertion that nearly every charged first degree murder could support at least one aggravating circumstance." *Id.*, at 551, 390 P. 3d, at 791.

C

Despite assuming that the aggravating circumstances fail to materially narrow the class of death-eligible first-degree murder defendants, the Arizona Supreme Court nevertheless concluded that the State's death penalty system meets the Constitution's narrowing requirement. It said that the petitioner was "mistaken . . . insofar as he focuses only on the legislatively defined aggravating circumstances" because use of those circumstances "is not the only way in which Arizona's sentencing scheme narrows the class of persons eligible for death." *Id.*, at 551–552, 390 P. 3d, at 791–792. The Arizona Supreme Court mentioned five other ways it thought Arizona's death penalty system meets the Constitution's narrowing requirement. They were: (1) Arizona's first-degree murder statute; (2) the "identified aggravating circumstances"; (3) the fact that the State must prove "one or more" of the "alleged aggravating circumstances" "beyond a reasonable doubt"; (4) the existence of "mandatory appellate review"; and (5) Arizona's statutory provisions applicable to "individualized sentencing determinations" through consideration of "mitigating circumstances." *Id.*, at 552, 390 P. 3d, at 792.

We have considered (and rejected) the first of these other ways since Arizona's first-degree murder statute does not "provid[e] for categorical narrowing at the definition stage." *Zant*, 462 U. S., at 879. What about the second way—that is, narrowing by means of the "statutory aggravators"? Again, the Arizona Supreme Court assumed that those factors do not, in fact, narrow the class

of death-eligible first-degree murder defendants. Instead it assumed that "Hidalgo is right in his factual assertion that nearly every charged first degree murder could support at least one aggravating circumstance." 241 Ariz., at 551, 390 P. 3d, at 791. That assumption, without more, would seem to deny the constitutional need to "genuinely" narrow the class of death-eligible defendants. *Zant*, *supra,* at 877. Moreover, the third and fourth narrowing methods the Arizona Supreme Court invoked are basically beside the point—they do not show the necessary *legislative* narrowing that our precedents require. And the final other way (individualized sentencing determinations) concerns an entirely different capital punishment requirement—the selection decision—which is not at issue in this case. See *supra*, at 2–3.

Finally, the Arizona Supreme Court seemed to suggest that *prosecutors* may perform the narrowing requirement by choosing to ask for the death penalty only in those cases in which a particularly wrongful first-degree murder is at issue. See 241 Ariz., at 551–552, 390 P. 3d, at 791–792. However, that reasoning cannot be squared with this Court's precedent—precedent that insists that States perform the "constitutionally necessary" narrowing function "at the stage of *legislative* definition." *Zant*, *supra*, at 878 (emphasis added); see also *Tuilaepa*, 512 U. S., at 979; *Lowenfield*, 484 U. S., at 246; *Ramos*, 463 U. S., at 1008.

* * *

Although, in my view, the Arizona Supreme Court misapplied our precedent, I agree with the Court's decision today to deny certiorari. In support of his Eighth Amendment challenge, the petitioner points to empirical evidence about Arizona's capital sentence system that suggests about 98% of first-degree murder defendants in Arizona were eligible for the death penalty. That evidence is unrebutted. It points to a possible constitutional prob-

lem. And it was assumed to be true by the state courts below. Evidence of this kind warrants careful attention and evaluation. However, in this case, the opportunity to develop the record through an evidentiary hearing was denied. As a result, the record as it has come to us is limited and largely unexamined by experts and the courts below in the first instance. We do not have evidence, for instance, as to the nature of the 866 cases (perhaps they implicate only a small number of aggravating factors). Nor has it been fully explained whether and to what extent an empirical study would be relevant to resolving the constitutional question presented. Capital defendants may have the opportunity to fully develop a record with the kind of empirical evidence that the petitioner points to here. And the issue presented in this petition will be better suited for certiorari with such a record.

APPENDIX

Ariz. Rev. Stat. Ann. §13–751(F) (Cum. Supp. 2017)

"F. The trier of fact shall consider the following aggravating circumstances in determining whether to impose a sentence of death:

"1. The defendant has been convicted of another offense in the United States for which under Arizona law a sentence of life imprisonment or death was imposable.

"2. The defendant has been or was previously convicted of a serious offense, whether preparatory or completed. Convictions for serious offenses committed on the same occasion as the homicide, or not committed on the same occasion but consolidated for trial with the homicide, shall be treated as a serious offense under this paragraph.

"3. In the commission of the offense the defendant knowingly created a grave risk of death to another person or persons in addition to the person murdered during the commission of the offense.

"4. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"5. The defendant committed the offense as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value.

"6. The defendant committed the offense in an especially heinous, cruel or depraved manner.

"7. The defendant committed the offense while:

"(a) In the custody of or on authorized or unauthorized release from the state department of corrections, a law enforcement agency or a county or city jail.

"(b) On probation for a felony offense.

"8. The defendant has been convicted of one or more other homicides . . . that were committed during the commission of the offense.

"9. The defendant was an adult at the time the offense

was committed or was tried as an adult and the murdered person was under fifteen years of age, was an unborn child in the womb at any stage of its development or was seventy years of age or older.

"10. The murdered person was an on duty peace officer who was killed in the course of performing the officer's official duties and the defendant knew, or should have known, that the murdered person was a peace officer.

"11. The defendant committed the offense with the intent to promote, further or assist the objectives of a criminal street gang or criminal syndicate or to join a criminal street gang or criminal syndicate.

"12. The defendant committed the offense to prevent a person's cooperation with an official law enforcement investigation, to prevent a person's testimony in a court proceeding, in retaliation for a person's cooperation with an official law enforcement investigation or in retaliation for a person's testimony in a court proceeding.

"13. The offense was committed in a cold, calculated manner without pretense of moral or legal justification.

"14. The defendant used a remote stun gun or an authorized remote stun gun in the commission of the offense.

[Note: Since 2001, the Arizona Legislature has added aggravators 11 through 14.]

SUPREME COURT OF THE UNITED STATES

GLEN CAMPBELL *v.* OHIO

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF OHIO, CUYAHOGA COUNTY

No. 17–6232. Decided March 19, 2018

The petition for a writ of certiorari is denied.

Statement of JUSTICE SOTOMAYOR respecting the denial of certiorari.

Petitioner Glen Campbell challenges the constitutionality of Ohio Rev. Code Ann. §2953.08(D)(3) (West Supp. 2017), which provides that sentences "imposed for aggravated murder or murder" are "not subject to review." I concur in the denial of certiorari because Campbell failed adequately to present his constitutional arguments to the state courts. I nonetheless write separately because a statute that shields from judicial scrutiny sentences of life without the possibility of parole raises serious constitutional concerns.

In Ohio, after a defendant is found guilty of aggravated murder, the State authorizes a range of penalties, including life in prison with parole eligibility after 20, 25, or 30 years, or life imprisonment without the possibility of parole. See §2929.03(A)(1). Under that scheme, Campbell was sentenced to life imprisonment without the possibility of parole after pleading guilty to aggravated murder. He challenged his sentence on appeal, arguing in part that the trial court failed to balance the aggravating and mitigating factors as required by §2929.12 of the Ohio statute.[1]

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[1] In making sentencing determinations in felony cases, Ohio provides that courts "shall be guided by the overriding purposes of felony sentencing . . . to protect the public from future crime" and "punish the offender," §2929.11, and "shall consider" certain statutory aggravating and mitigating factors, §2929.12.

The Court of Appeals of Ohio found this argument "unreviewable" under §2953.08(D)(3). App. to Pet. for Cert. A–3. That provision, contained within the appellate review section of the Ohio statute, provides: "A sentence imposed for aggravated murder or murder pursuant to sections 2929.02 to 2929.06 of the Revised Code is not subject to review under this section." §2953.08(D)(3). The court below relied on precedent from the Supreme Court of Ohio, which has held that §2953.08(D)(3) is "unambiguous" and "clearly means what it says: such a sentence cannot be reviewed." *State* v. *Porterfield*, 106 Ohio St. 3d 5, 8, 2005-Ohio-3095, ¶17, 829 N. E. 2d 690, 693.

Trial judges making the determination whether a defendant should be condemned to die in prison have a grave responsibility, and the fact that Ohio has set up a scheme under which those determinations "cannot be reviewed" is deeply concerning. Life without parole "is the second most severe penalty permitted by law." *Harmelin* v. *Michigan*, 501 U. S. 957, 1001 (1991) (KENNEDY, J., concurring in part and concurring in judgment). In recent years this Court has recognized that, although death is different, "life without parole sentences share some characteristics with death sentences that are shared by no other sentences." *Graham* v. *Florida*, 560 U. S. 48, 69 (2010). "Imprisoning an offender until he dies alters the remainder of his life 'by a forfeiture that is irrevocable.'" *Miller* v. *Alabama*, 567 U. S. 460, 474–475 (2012) (quoting *Graham*, 560 U. S., at 69). A life-without-parole sentence "means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of the convict, he will remain in prison for the rest of his days." *Id.,* at 70 (internal quotation marks and bracket omitted).

Because of the parallels between a sentence of death and a sentence of life imprisonment without parole, the Court has drawn on certain Eighth Amendment require-

ments developed in the capital sentencing context to inform the life-without-parole sentencing context. For instance, this Court imported the Eighth Amendment requirement "demanding individualized sentencing when imposing the death penalty" into the juvenile conviction context, holding that "a similar rule should apply when a juvenile confronts a sentence of life (and death) in prison." *Miller*, 567 U. S., at 475, 477. The Court also categorically banned life-without-parole sentences for juvenile offenders who did not commit homicide. See *Graham*, 560 U. S., at 82.

The "correspondence" between capital punishment and life sentences, *Miller*, 567 U. S., at 475, might similarly require reconsideration of other sentencing practices in the life-without-parole context. As relevant here, the Eighth Amendment demands that capital sentencing schemes ensure "measured, consistent application and fairness to the accused," *Eddings* v. *Oklahoma*, 455 U. S. 104, 111 (1982), with the purpose of avoiding "the arbitrary or irrational imposition of the death penalty," *Parker* v. *Dugger*, 498 U. S. 308, 321 (1991). To that aim, "this Court has repeatedly emphasized that meaningful appellate review of death sentences promotes reliability and consistency." *Clemons* v. *Mississippi*, 494 U. S. 738, 749 (1990); see also *Parker*, 498 U. S., at 321 ("We have emphasized repeatedly the crucial role of meaningful appellate review in ensuring that the death penalty is not imposed arbitrarily or irrationally"); *Gregg* v. *Georgia*, 428 U. S. 153, 195 (1976) (joint opinion of Steward, Powell, and Stevens, JJ.) (noting that "the further safeguard of meaningful appellate review is available to ensure that death sentences are not imposed capriciously or in a freakish manner").

In my view, this jurisprudence provides good reason to question whether §2953.08(D)(3) really "means what it says": that a life-without-parole sentence, no matter how

arbitrarily or irrationally imposed, is shielded from meaningful appellate review. Our Eighth Amendment jurisprudence developed in the capital context calls into question whether a defendant should be condemned to die in prison without an appellate court having passed on whether that determination properly took account of his circumstances, was imposed as a result of bias,[2] or was otherwise imposed in a "freakish manner." And our jurisprudence questions whether it is permissible that Campbell must now spend the rest of his days in prison without ever having had the opportunity to challenge why his trial judge chose the irrevocability of life without parole over the hope of freedom after 20, 25, or 30 years. The law, after all, granted the trial judge the discretion to impose these lower sentences. See §2929.03(A)(1).

This case did not present either the Ohio courts or this Court the occasion to decide this important question.[3] I believe the Ohio courts will be vigilant in considering it in the appropriate case.

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[2] Although the State argues that a defendant can present a claim of bias on state postconviction proceedings, see Brief in Opposition 11, those claims are limited to claims of "a consistent pattern of disparity in sentencing by the judge," Ohio Rev. Code Ann. §2953.21(A)(5). The State does not address how a defendant convicted of aggravated murder can raise a substantial claim of bias if it is not part of a "consistent pattern."

[3] Campbell advanced his meaningful-review claim as a due process, rather than an Eighth Amendment, claim. He also argued that the Ohio statute violated the Equal Protection Clause.

SUPREME COURT OF THE UNITED STATES

GARCO CONSTRUCTION, INC. *v.* ROBERT M. SPEER, ACTING SECRETARY OF THE ARMY

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

No. 17–225. Decided March 19, 2018

The petition for a writ of certiorari is denied.

JUSTICE THOMAS, with whom JUSTICE GORSUCH joins, dissenting from the denial of certiorari.

Petitioner Garco Construction, Inc. (Garco), had a contract with the Army Corps of Engineers to build housing units on Malmstrom Air Force Base. As part of its contract, Garco agreed to comply with all base access policies. After construction began, the base denied access to certain employees of Garco's subcontractor. Although the text of the base's access policy required only a "wants and warrants" check, App. to Pet. for Cert. 105a, the base clarified that the policy also required background checks and excluded many individuals with criminal histories—even if those individuals did not have any wants or warrants. Garco's request for an equitable adjustment of the contract was denied, and the Armed Services Board of Contract Appeals denied Garco's appeal. The Court of Appeals for the Federal Circuit affirmed. Despite acknowledging "some merit" to Garco's argument that "'wants and warrants'" means only wants and warrants, the Federal Circuit deferred to the base's interpretation of its access policy under *Auer* v. *Robbins*, 519 U. S. 452 (1997). 856 F. 3d 938, 943 (2017).

Garco filed a petition for certiorari, asking whether this Court's decisions in *Auer*, *supra*, and *Bowles* v. *Seminole Rock & Sand Co.*, 325 U. S. 410 (1945), should be overruled. I would have granted certiorari to address that

question.

Seminole Rock and *Auer* require courts to give "controlling weight" to an agency's interpretation of its own regulations. *Seminole Rock*, *supra*, at 414; accord, *Auer*, *supra*, at 461. To qualify, an agency's interpretation need not be "the best" reading of the regulation. *Decker* v. *Northwest Environmental Defense Center*, 568 U. S. 597, 613 (2013). It need only be a reading that is not "plainly erroneous or inconsistent with the regulation." *Ibid.* (internal quotation marks omitted). Although *Seminole Rock* deference was initially applied exclusively "in the price control context and only to official agency interpretations," Knudsen & Wildermuth, Unearthing the Lost History of *Seminole Rock*, 65 Emory L. J. 47, 52–53 (2015), this Court has since expanded it to many contexts and to informal interpretations. See *id.,* at 52–53, 68–77, 86–92 (2015); *Perez* v. *Mortgage Bankers Assn.*, 575 U. S. ___, ___–___ (2015) (THOMAS, J., concurring in judgment) (slip op., at 3–4).

Seminole Rock deference is constitutionally suspect. See *Mortgage Bankers*, 575 U. S., at ___–___ (slip op., at 8–16). It transfers "the judge's exercise of interpretive judgment to the agency," which is "not properly constituted to exercise the judicial power." *Id.,* at ___ (slip op., at 13). It also undermines "the judicial 'check' on the political branches" by ceding the courts' authority to independently interpret and apply legal texts. *Id.,* at ___ (slip op., at 14). And it results in an "accumulation of governmental powers" by allowing the same agency that promulgated a regulation to "change the meaning" of that regulation "at [its] discretion." *Id.,* at ___ (slip op., at 16). This Court has never "put forward a persuasive justification" for *Seminole Rock* deference. *Decker*, *supra*, at 617 (Scalia, J. concurring in part and dissenting in part); see also *Mortgage Bankers*, *supra*, at ___–___ (opinion of THOMAS, J.) (slip op., at 18–23) (explaining why each of the proffered explanations for the doctrine is unpersuasive).

By all accounts, *Seminole Rock* deference is "on its last gasp." *United Student Aid Funds, Inc.* v. *Bible*, 578 U. S. ___, ___ (2016) (THOMAS, J., dissenting from denial of certiorari) (slip op., at 1). Several Members of this Court have said that it merits reconsideration in an appropriate case. See, *e.g., Mortgage Bankers*, 575 U. S., at ___–___ (ALITO, J., concurring in part and concurring in judgment) (slip op., at 1–2); *id.,* at ___ (opinion of THOMAS, J.) (slip op., at 23); *Decker*, *supra*, at 615–616 (ROBERTS, C. J., concurring). Even the author of *Auer* came to doubt its correctness. See *Mortgage Bankers*, *supra*, at ___–___ (Scalia, J., concurring in judgment) (slip op., at 2–5); *Decker*, *supra*, at 616–621 (opinion of Scalia, J.); *Talk America, Inc.* v. *Michigan Bell Telephone Co.*, 564 U. S. 50, 68–69 (2011) (Scalia, J., concurring).

This would have been an ideal case to reconsider *Seminole Rock* deference, as it illustrates the problems that the doctrine creates. While Garco was performing its obligations under the contract, the base adopted an interpretation of its access policy that read "wants and warrants" to include "wants or warrants, sex offenders, violent offenders, those who are on probation, and those who are in a pre-release program." App. to Pet. for Cert. 60a. The Federal Circuit deferred to that textually dubious interpretation. 856 F. 3d, at 945. Thus, an agency was able to unilaterally modify a contract by issuing a new " 'clarification' with retroactive effect." *Decker*, *supra*, at 620 (opinion of Scalia, J.). This type of conduct "frustrates the notice and predictability purposes of rulemaking, and promotes arbitrary government." *Talk America*, *supra*, at 69 (opinion of Scalia, J.).

True, the agency here is part of the military, and the military receives substantial deference on matters of policy. See *Orloff* v. *Willoughby*, 345 U. S. 83, 94 (1953). But nothing about the military context of this case affects the legitimacy of *Seminole Rock* deference. "The proper

question faced by courts in interpreting a regulation is . . . what the regulation *means*." *Mortgage Bankers*, 575 U. S., at ___ (opinion of THOMAS, J.) (slip op., at 18) (emphasis added). While the military is far better equipped than the courts to decide matters of tactics and security, it is no better equipped to read legal texts. Pointing to the military's policy expertise "misidentifies the relevant inquiry." *Ibid.*

Because this Court has passed up another opportunity to remedy "precisely the accumulation of governmental powers that the Framers warned against," *id.,* at ___ (slip op., at 16), I respectfully dissent from the denial of certiorari.