(ORDER LIST: 595 U.S.)

MONDAY, NOVEMBER 1, 2021

CERTIORARI -- SUMMARY DISPOSITIONS

20-1501 ROMAN CATHOLIC DIOCESE, ET AL. V. EMAMI, SHIRIN, ET AL.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the Appellate Division, Supreme Court of New York, Third Judicial Department for further consideration in light of *Fulton* v. *Philadelphia*, 593 U. S. ___ (2021). Justice Thomas, Justice Alito, and Justice Gorsuch would grant the petition for a writ of certiorari.

20-1594 ROJAS, MURRAY V. UNITED STATES

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Third Circuit for further consideration in light of the confession of error by the Solicitor General in her brief for the United States filed on September 17, 2021.

21-7 GARLAND, ATT'Y GEN., ET AL. V. VELASQUEZ, LEYMIS C., ET AL.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eighth Circuit for further consideration in light of *Sanchez* v. *Mayorkas*, 593 U. S. ___ (2021).

ORDERS IN PENDING CASES

21A41 HEISLER, REGINA V. GIROD LOANCO, LLC, ET AL.

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

21M33 JOHNSON, ANTOINE L. V. SCHAEFER, R. C., ET AL.

21M34 LLOYD, DOLORES V. PRESBY'S INSPIRED LIFE, ET AL.

The motions to direct the Clerk to file petitions for writs of certiorari out of time are denied.

21M35 MARTINEZ, ANTONIO R. V. UNITED STATES

The motion for leave to file a petition for a writ of certiorari with the supplemental appendix under seal is granted.

21M36 PURISIMA, ANTON V. ARLINGTON COUNTY, VA, ET AL.

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

21M37 WRIGHT, ZACHARIAH B. V. INDIANA

The motion for leave to file a petition for a writ of certiorari with the supplemental appendix under seal is granted.

21M38 RIVERA, MICHAEL B. V. ARIZONA

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

19-1392 DOBBS, MS HEALTH OFFICER, ET AL. V. JACKSON WOMEN'S HEALTH, ET AL.

The motion of Hannah S. for leave to participate in oral argument as *amicus curiae* and for enlargement of time for oral argument out of time is denied.

20-1650 CONCEPCION, CARLOS V. UNITED STATES

The motion of petitioner to dispense with printing the joint appendix is granted.

CERTIORARI DENIED

20-1395 OMWEGA, PHOEBE B. V. GARLAND, ATT'Y GEN.

20-1574 OCOL, JOSEPH V. CHICAGO TEACHERS UNION, ET AL.

20-1603 BENNETT, SUSAN V. AMERICAN FEDERATION, ET AL.

20-1606 HENDRICKSON, BRETT V. AFSCME COUNCIL 18, ET AL.

20-1636 BOURDON, DOUGLAS V. DEPT. OF HOMELAND SEC., ET AL.

20-1644 ARCHER, DEVON V. UNITED STATES

20-1751 FISCHER, SUSAN, ET AL. V. MURPHY, GOV. OF NJ, ET AL.

20-1779 MORALES-VáZQUEZ, CARLOS A. V. ÓPTIMA SEGUROS

20-1786 TROESCH, JoANNE, ET AL. V. CHICAGO TEACHERS UNION, ET AL.

20-1791 CAMARENA, KEILA R., ET AL. V. JOHNSON, TAE D., ET AL.

20-1817 EZAKI GLICO, ET AL. V. LOTTE INTERNATIONAL AM., ET AL.

20-8342 JOHNSON, JOHN W. V. UNITED STATES

20-8458 STEIN, PATRICK E. V. UNITED STATES

20-8462 HARRIS, RODERICK N. V. TEXAS

21-51 CENTRAL PAYMENT CO., LLC V. CUSTOM HAIR DESIGNS, ET AL.

21-57 FRASIER, LEVI V. EVANS, CHRISTOPHER L., ET AL.

21-80 OUTDOOR AMUSEMENT ASSN., ET AL. V. DEPT. OF HOMELAND SEC., ET AL.

21-104 HARLEY, ROBERT T. V. GARLAND, ATT'Y GEN., ET AL.

21-108 KRISLOV, CLINT, ET AL. V. COOK COUNTY OFFICERS, ET AL.

21-121 TAH, CHRISTIANA, ET AL. V. GLOBAL WITNESS PUBL'G, ET AL.

21-155 CUSTIN, JOHN M. V. WIRTHS, HAROLD J., ET AL.

21-214 SHAH, SHANTUBHAI N. V. MEIER ENTERPRISES, INC. ET AL.

21-226 LIBERTARIAN PARTY OF OH, ET AL. V. CRITES, DON M., ET AL.

21-277 SMITH, BETTY E., ET AL. V. HPR CLINIC, LLC, ET AL.

21-289 WINSLOW, RANDALL V. SUPREME COURT OF PA, ET AL.

21-290 CHAPO, JOSEPH, ET AL. V. JEFFERSON CTY. PLAN COMM'N

21-293 POWELL, VINCENT A. V. SHINN, DIR., AZ DOC, ET AL.

21-294 MEHTA, RUKMINESH V. KUHL, MAGGIE

21-301 SIMS, MARIO L. V. BANK OF NEW YORK

21-303 PILLAY, VIGNARAJ M. V. PUBLIC STORAGE INC.

21-304 BROWN, SHARON V. CHEROKEE CTY. SCH. DIST.

21-306 SEALES, TROY V. CALIFORNIA

21-308 SUNDY, TIM V. FRIENDSHIP PAVILION, ET AL.

21-330 GURVEY, AMY R. V. COWAN, LIEBOWITZ, ET AL.

21-336 HUANG, SHIYANG V. SPECTOR, BRIAN F., ET AL.

21-337 BERKA, GEORGE V. HOCHUL, GOV. OF NY

21-343 SMITH, MICHELLE J. V. FRENCH, NICHOLAS

21-346 REIGNAT-VODI, YVONNE V. MOTOR VEHICLE ADMINISTRATION

21-352 GONZALES, JASON V. MADIGAN, MICHAEL J., ET AL.

21-354 SOLOMON, DAVID V. AMAZON.COM, INC., ET AL.

21-356 RICHARDS, JERMAIN V. V. CONNECTICUT

21-362 GNALEGA, REUEL JACQUES A. V. UNITED STATES, ET AL.

21-368 PATTERSON, GUY V. KIJAKAZI, COMM'R, SOCIAL SEC.

21-394 PACE, D. F. V. BAKER-WHITE, EMILY, ET AL.

21-398 GUERRERO, JESUS V. DIOCESE OF LUBBOCK

21-405 EMERALD HOME CARE, INC. V. DEPT. OF UNEMPLOYMENT ASST.

21-419 LEWIS, BOB V. GOOGLE LLC, ET AL.

21-431 GREENWOOD, GRANT L. V. MINNESOTA

21-440 SANTANA, MIGUEL A. V. MARYLAND

21-457 ENCO SYSTEMS, INC. V. DaVINCIA, LLC

21-464 OHIO, EX REL. MERRILL, ET AL. V. DEPT. OF NAT. RESOURCES, ET AL.

21-473 SZMANIA, DANIEL G. V. WELLS FARGO BANK

21-492 PROSPER, EDELINE J. V. MARTIN, ANTHONY

21-5039 WRIGHT, GAVIN W. V. UNITED STATES

21-5176 TURNER, DE'UNDRE V. UNITED STATES

21-5327 GONZALEZ, MARK A. V. TEXAS

21-5414 TIPPINS, JOHNNY V. IMMEL, ANTHONY, ET AL.

21-5423 CABBAGESTALK, SHAHEEN V. BERLEY, WILLIAM, ET AL.

21-5430 STUCKS, PERCY A. V. FLORIDA

21-5442 CROOK, JASPER V. SHEA, ROBIN

21-5445 BORECKI, HENRYK S. V. DEPT. OF HOMELAND SEC., ET AL.

21-5465 WILLIAMS, KENT G. V. STEWART, ALAN, ET AL.

21-5466 CASTRO, ROXMAN C. V. LUMPKIN, DIR., TX DCJ

21-5467 DENTON, MICHAEL V. HAYNES, WARDEN, ET AL.

21-5469 TEAGAN, ZIAHONNA V. McDONOUGH, GA

21-5471 WELSH, LONNIE K. V. CORRECT CARE RECOVERY, ET AL.

21-5482 MATTHEWS, MICHAEL D. V. DAVIDS, WARDEN

21-5483 JACKSON, DAVID L. V. OKLAHOMA

21-5487 ACHIN, NORMAN M. V. VIRGINIA

21-5490 BOURGEOIS, JOSEPH M. V. TEXAS

21-5493 PLOURDE, GLEN V. DOE, JANE

21-5495 YEYILLE, JOSé V. ACOSTA-LEON, ARMANDINA, ET AL.

21-5496 YEYILLE, JOSé V. ACOSTA-LEON, ARMANDINA, ET AL.

21-5497 YEYILLE, JOSé V. ACOSTA-LEON, ARMANDINA, ET AL.

21-5500 SMITH, JOHN R. V. LUMPKIN, DIR., TX DCJ

21-5506 PETERS, MICHAEL G. V. HUFFMAN, DINAH, ET AL.

21-5507 PETERS, MICHAEL G. V. TEXAS, ET AL.

21-5508 NORFLEET, MARC V. BALDWIN, JOHN R., ET AL.

21-5509 McKIVER, LUTHER V. INCH, SEC., FL DOC, ET AL.

21-5510 PRAYED V. DEPT. OF LABOR, ET AL.

21-5513 SECKINGTON, CHRISTOPHER V. INCH, SEC., FL DOC

21-5522 KELLY, MEGHAN V. TRUMP, DONALD J.

21-5535 MAYBERRY, TIMOTHY M. V. INDIANA

21-5536 LEE, EDDIE D. V. CROW, DIR., OK DOC

21-5539 WOO, JAMES T. V. COLORADO

21-5542 LATORRE, CAMILO J. A. V. PUERTO RICO

21-5545 RICHARDSON, JOHN V. MOBILE SHERIFF'S DEPARTMENT

21-5546 RODRIGUEZ, FERNANDO V. LUMPKIN, DIR., TX DCJ

21-5547 SIDDHA, YIMOE V. SEALING, DONALD B.

21-5549 LAUGA, WILLIAM D. V. LOUISIANA

21-5550 WELCH, DARREL V. ILLINOIS

21-5551 FLUGENCE, FLOYD V. VANNOY, WARDEN

21-5552 GREEN, BRIAN V. PERRY, WARDEN

21-5555 HARTWELL, ROSS A. V. LUMPKIN, DIR., TX DCJ

21-5556 DAVIS, BRET V. ILLINOIS

21-5557 MILLER, CHASMIND D. V. GEICO, ET AL.

21-5558 LANGRUM, WILLIAM P. V. LUMPKIN, DIR., TX DCJ

21-5562 CURRAN, RICHARD C. V. PENNSYLVANIA, ET AL.

21-5567 DEAN, DAMOND V. LUMPKIN, DIR., TX DCJ

21-5568 WILSON, CARL A. V. LUMPKIN, DIR., TX DCJ

21-5569 CHARLES, PATRICK V. CALIBER HOME LOANS, ET AL.

21-5573 MILLER, RICHARD M. V. MARYLAND

21-5576 BROWN, VICTOR S. V. ASUNCION, WARDEN

21-5578 MINZE, GUY D. V. TEXAS

21-5579 PEREZ, EMMANUEL V. NEBRASKA

21-5580 TAYLOR, MARION V. VANNOY, WARDEN

21-5581 LAFOND, RAOUL V. GLASER, RICHARD, ET AL.

21-5591 BURNETT, VERETTA V. GARLAND, ATT'Y GEN., ET AL.

21-5593 AKAAZUA, DENNIS V. WALKER NOVAK LEGAL GROUP, ET AL.

21-5602 GARZA, CHARLES E. V. NEBRASKA

21-5618 MORAN, JESUS M. V. BRNOVICH, ATT'Y GEN. OF AZ

21-5622 SULLIVAN, MICHAEL C. V. CARRINGTON, KAREN, ET AL.

21-5635 HAIRSTON, JAMAIL D. V. MASSACHUSETTS

21-5643 EAST EL, KAON-JABBAR V. UNITED PARCEL SERVICE, INC.

21-5665 JAUREGUI-GARCIA, RAMON V. GARLAND, ATT'Y GEN., ET AL.

21-5669 WOODS, THOMAS V. ALVES, SUPT., NORFOLK

21-5672 DOTY, WAYNE C. V. FLORIDA

21-5683 McBRIDE, JEROME V. NINES, WARDEN, ET AL.

21-5684 PAIGE, ZAIRE V. ECKERT, SUPT., WENDE, ET AL.

21-5710 FIELDGROVE, CHARLES L. V. FRAKES, DIR., NE DOC, ET AL.

21-5715 WHITEHOUSE, RONALD G. V. UNITED STATES

21-5735 LIRA-SALINAS, JUAN M. V. UNITED STATES

21-5737 MAYA, ELIZABETH V. DEUTSCHE BANK NATIONAL TRUST CO.

21-5739 IFECHUKWU, TOBECHUKWU V. GARLAND, ATT'Y GEN.

21-5751 KOVARY, CHARLES E. V. CHAPMAN, WARDEN

21-5752 VETCHER, IVAN A. V. ICE, ET AL.

21-5786 TIPPETT, JERRY R. V. MYRICK, SUPT., TWO RIVERS

21-5790 BROWN, PATRICIA A. V. CAIN, COMM'R, MS DOC, ET AL.

21-5836 WILSON, CHRISTOPHER V. MISSISSIPPI

21-5853 GASTON, NOAH V. MAINE

21-5856 GIBBS, RAYMOND L. V. McDOWELL, WARDEN

21-5887 NEIL, MIGUEL V. FORSHEY, WARDEN

21-5934 BRANHAM, CHARLES I. V. MONTANA, ET AL.

The petitions for writs of certiorari are denied.

19-1135 DIGNITY HEALTH V. MINTON, EVAN

The petition for a writ of certiorari is denied. Justice Thomas, Justice Alito, and Justice Gorsuch would grant the petition for a writ of certiorari.

21-230 VIEHWEG, WILLIAM H. V. SIRIUS XM RADIO, INC.

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

21-5517 McQUIRTER, LONZIE W. V. MICHIGAN

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.

21-5817 PEARSON, JAMES E. V. HILL, ATT'Y GEN. OF WY

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

HABEAS CORPUS DENIED

21-5821 IN RE EDUARDO PINEDA

21-5924 IN RE JOSE V. HERNANDEZ-CUELLAR

21-5927 IN RE LINDSEY ORR

21-5948 IN RE HENRYK S. BORECKI

The petitions for writs of habeas corpus are denied.

21-5920 IN RE JASON BROOKS

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

MANDAMUS DENIED

21-295 IN RE AMERICA'S FRONTLINE DOCTORS, ET AL.

21-5444 IN RE CALVIN JAMES

21-5512 IN RE SHANNON RILEY

The petitions for writs of mandamus are denied.

21-300 IN RE JOY GARNER, ET AL.

The motion of Institute for Health Research for leave to

file a brief as *amicus curiae* is granted. The petition for a writ of mandamus is denied.

21-5115 IN RE LISA A. BIRON

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

21-5454 IN RE SAMUEL L. QUINN

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

REHEARING DENIED

20-1724 MURPHY, DAVID J. V. CITIGROUP GLOBAL MARKETS, ET AL.

The petition for rehearing is denied.

SUPREME COURT OF THE UNITED STATES

RONRICO SIMMONS, JR. *v.* UNITED STATES

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

No. 20–1704. Decided November 1, 2021

The petition for a writ of certiorari is denied.

Statement of JUSTICE SOTOMAYOR, with whom JUSTICE KAGAN joins, respecting the denial of certiorari.

RonRico Simmons, Jr., alleges that he was unable to file a habeas petition within one year of his federal conviction, the general deadline for seeking such relief, because the state prisons where he was imprisoned had no materials about federal habeas law. See 28 U. S. C. §2255(f)(1). The Sixth Circuit, however, concluded that even if the state prisons lacked any such legal materials, Simmons' petition was time barred because Simmons, in his *pro se* filing, failed "to allege a causal connection" between his inability to access materials about federal habeas law and his failure to file a federal habeas petition. 974 F. 3d 791, 798 (2020). Because this petition does not meet our traditional criteria for review, I do not dissent from the denial of certiorari. I write separately to stress that the Sixth Circuit's parsimonious reading of Simmons' *pro se* motion appears contrary to our longstanding instruction that *pro se* filings must be "liberally construed." *Estelle* v. *Gamble*, 429 U. S. 97, 106 (1976).

This Court has long held that "'the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.'" *Lewis* v. *Casey*, 518 U. S. 343, 346 (1996) (quot-

ing *Bounds* v. *Smith*, 430 U. S. 817, 828 (1977)). Specifically, prisons must provide the legal materials and "tools . . . that the inmates need in order to attack their sentences, directly or collaterally." *Lewis*, 518 U. S., at 355. Several Circuits have held, therefore, that a prison's failure to provide these "tools" may constitute an unconstitutional government impairment that tolls the 1-year statutory filing deadline for seeking habeas relief under §2255 or §2244.* If this rule applied to Simmons, his habeas petition was timely because he filed it within a year of his arrival at a prison that enabled him to access federal legal materials. See §2255(f)(2).

The Sixth Circuit held that Simmons' petition was time barred, even if he had no access to federal habeas materials and even if this lack of access was unconstitutional, because it found his explanation "conclusory" as to why a lack of all federal habeas materials impeded his filing. 974 F. 3d, at 797. The court acknowledged that Simmons had alleged that the lack of access to federal law "prevented" him from filing and that he "did not, strictly speaking, need to answer any particular question" in the allegations of his petition. *Ibid.* It nonetheless concluded that he should have known to provide additional details by, for instance, explaining that he discovered the lack of materials when he attempted to go to the library or asked for legal assistance. *Ibid.*

The Sixth Circuit's reasoning appears questionable. To the extent the court was imposing a diligence requirement for invoking the §2255(f)(2) filing deadline, that requirement appears nowhere in the provision's text. To the extent the court was not imposing such a requirement, it was

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*See *Estremera* v. *United States*, 724 F. 3d 773, 776 (CA7 2013) (addressing 28 U. S. C. §2255(f)(2)'s deadline for filing §2255 petitions); *Egerton* v. *Cockrell*, 334 F. 3d 433, 439 (CA5 2003) (addressing §2244(d)(1)(B)'s deadline for filing §2244 petitions); *Whalem/Hunt* v. *Early*, 233 F. 3d 1146, 1147–1148 (CA9 2000) (en banc) (same).

likely imposing an inappropriately high bar on a *pro se* filing. Simmons specified the legal materials that were unavailable: the "'Rules Governing 2255 Proceedings and [the Antiterrorism and Effective Death Penalty Act of 1996] statute of limitations,'" as well as any "'federal Law Library.'" *Id.*, at 793. And he explained that this lack of access "'prevented him from having the ability to timely pursue and know the timeliness for filing a 2255 Motion.'" *Ibid.* Little "liberal construction" is required to understand this as pleading causation: Simmons alleged that his inability to access habeas law materials prevented him from understanding how and when to file a habeas petition, and therefore from filing. See *Lewis*, 518 U. S., at 351 (noting that an inmate could plead a violation of right of access to the courts because he "suffered arguably actionable harm that he wished to bring before the courts, but was so stymied by inadequacies of the law library that was unable even to file a complaint").

As this Court has repeatedly stressed, "'a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" *Erickson* v. *Pardus*, 551 U. S. 89, 94 (2007) (*per curiam*) (summarily reversing where a *pro se* complaint was dismissed "on the ground that petitioner's allegations of harm were too conclusory to put these matters in issue"). These liberal construction requirements for *pro se* litigants carry particular weight when courts consider habeas filings, given that "[t]he writ of habeas corpus plays a vital role in protecting constitutional rights." *Slack* v. *McDaniel*, 529 U. S. 473, 483 (2000).

A petitioner's failure to explain causation adequately may be proper cause for the court to provide clear guidance and an opportunity to remedy, or to hold an evidentiary hearing to determine the relevant facts, as other Circuits have required in similar circumstances. See, *e.g., Estremera* v. *United States*, 724 F. 3d 773, 777 (CA7 2013);

Whalem/Hunt v. *Early*, 233 F. 3d 1146, 1148 (CA9 2000) (en banc). It is rarely a reason to find a *pro se* habeas petition time barred on the pleadings. I trust the courts of appeals will do so only where our liberal pleading standards warrant such a harsh result.

SUPREME COURT OF THE UNITED STATES

WESLEY PAUL COONCE, JR. *v.* UNITED STATES

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

No. 19–7862. Decided November 1, 2021

The petition for a writ of certiorari is denied.

JUSTICE SOTOMAYOR, with whom JUSTICE BREYER and JUSTICE KAGAN join, dissenting from the denial of certiorari.

Petitioner Wesley Paul Coonce, Jr., was convicted in federal court of murder. Facing the death penalty, he argued that his execution would violate the Eighth Amendment because he has an intellectual disability. See *Atkins* v. *Virginia*, 536 U. S. 304 (2002). The District Court denied Coonce's *Atkins* claim without a hearing, the jury sentenced him to death, and the Eighth Circuit affirmed.

In denying Coonce relief without a hearing, the courts relied on the definition of intellectual disability by the American Association on Intellectual and Developmental Disabilities (AAIDD), which then required that an impairment manifest before age 18. It is undisputed that Coonce's impairments fully manifested at age 20. After Coonce petitioned for certiorari, the AAIDD changed its definition to include impairments that, like Coonce's, manifested before age 22.

The Government urges us to grant certiorari, vacate the judgment below, and remand (GVR), conceding that it is reasonably probable that the Eighth Circuit would reach a different result on reconsideration given the significant shift in the definition that formed the basis of its opinion. Instead, the Court denies certiorari. Because Coonce is entitled to a hearing on his *Atkins* claim, and because our precedents counsel in favor of a GVR, I respectfully dissent.

I

A

Coonce's childhood was marked by emotional, physical, and sexual abuse. He cycled through child psychiatric institutions beginning at age four. He entered the Texas juvenile system at age 11. While in juvenile custody, he cut his own body and had to be restrained so he would not further harm himself. He was sentenced to adult prison at age 17, where he continued to engage in self-mutilation.

At age 20, after Coonce's release from state prison, he suffered a traumatic brain injury. Coonce broke multiple facial bones, experienced bleeding around the brain, and briefly entered a coma. His IQ plummeted from average into the range of intellectual disability.

At age 29, while in federal prison serving a life sentence for kidnapping and carjacking, Coonce and his codefendant, Charles Michael Hall, attacked and killed Victor Castro Rodriguez, another prisoner. Hall was a decade older than Coonce, with an IQ about 30 points higher. It was Hall who bound, gagged, and blindfolded Castro. Hall consistently asserted that he had killed Castro by standing on his neck and suffocating him. Coonce, however, immediately claimed responsibility for the killing.

B

A jury convicted Coonce of first-degree murder and murder by a federal prisoner serving a life sentence. See 18 U. S. C. §§1111, 1118. After a penalty-phase hearing, the jury recommended death.[1] 932 F. 3d 623, 631 (CA8 2019).

Before trial, the defense represented that Coonce would

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[1]The jury unanimously found as a mitigating factor that Coonce's childhood "'was marked by chaos, abuse (both physical and sexual), as well as neglect and abandonment.'" 932 F. 3d, at 632. Eight jurors also found that Coonce "'ha[d] suffered from mental and emotional impairments from a very young age.'" *Ibid.*

not be raising a claim of intellectual disability. *Ibid.* However, on May 27, 2014, in the midst of the penalty-phase proceedings, this Court held that a "rigid rule" disqualifying a defendant from establishing intellectual disability if the defendant "scored a 71 instead of 70 on an IQ test" was unconstitutional. *Hall* v. *Florida*, 572 U. S. 701, 724. The next day, Coonce moved for relief under *Atkins*. He noted that he had scored a 71 on a reliable IQ test and argued that a rigid age-18 onset cutoff, like the 70-IQ cutoff in *Hall*, was unconstitutional.

The District Court denied the motion without a hearing. 932 F. 3d, at 633, 634. The Eighth Circuit affirmed. *Id.*, at 634. When considering Coonce's Eighth Amendment claim, the court acknowledged that "the [American Psychiatric Association (APA)] has recently changed its definition for the age of onset from before eighteen to 'during the developmental period,' defined as 'during childhood or adolescence.'" *Ibid.* And, it added, Coonce "tells us about literature suggesting the AAIDD, which still defines the age of onset as before eighteen, will eventually shift to a more vague standard." *Ibid.* The court rejected such "predictions" as "not sufficient for us to divine any current Eighth Amendment limitation." *Ibid.*

Coonce timely petitioned for certiorari. While his petition was pending, the AAIDD issued a new edition of its leading manual on intellectual disability. The manual included a revised definition of intellectual disability, which requires that a disability "originat[e] during the developmental period, which is defined operationally as before the individual attains age 22." AAIDD, Intellectual Disability: Definition, Diagnosis, Classification, and Systems of Supports 1 (12th ed. 2021) (AAIDD Manual). Coonce filed a supplemental petition requesting that the Court GVR so the Eighth Circuit could reconsider his *Atkins* claim in light of this new development.

The Government agreed. "This Court should GVR," it explained, "because the AAIDD's intervening definitional revision affects a central factual predicate for the court of appeals' Eighth Amendment analysis." Brief in Opposition 12. It conceded that "below, [it] invoked the AAIDD's and APA's 'leading publications' on intellectual disability" to argue for an age-18-onset standard; that the Eighth Circuit "likewise relied on" those standards; and that the change in the AAIDD's definition "affect[ed] a central factual predicate for the court of appeals' Eighth Amendment analysis." *Id.*, at 12, 14. "A GVR order is particularly warranted," the Government emphasized, "given the stakes in this capital context." *Id.*, at 15.

Nevertheless, the Court denies certiorari.

II

The Court's refusal to GVR is deeply concerning, especially given the strength of Coonce's claim. In context, the change in the AAIDD's definition provides compelling evidence of a shift in consensus in Coonce's favor with respect to the age of onset requirement. If he satisfies that requirement, he likely could establish an intellectual disability under *Atkins*.

A

"The Eighth Amendment prohibits certain punishments as a categorical matter." *Hall*, 572 U. S., at 708. "[A]s relevant for this case, persons with intellectual disability may not be executed." *Ibid.* "[T]he medical community defines intellectual disability according to three criteria: [1] significantly subaverage intellectual functioning, [2] deficits in adaptive functioning (the inability to learn basic skills and adjust behavior to changing circumstances), and [3] onset of these deficits during the developmental period." *Id.*, at 710. The Government does not dispute that Coonce has of-

fered enough evidence on the first two prongs of this definition to merit an *Atkins* hearing. With respect to the third prong, however, the courts below held that Coonce categorically could not prove intellectual disability because the Eighth Amendment required onset prior to age 18. Coonce, by contrast, argued that his age-20 onset may accord with the definition of intellectual disability.

Since the decision below, the consensus in support of Coonce's position has only grown. The AAIDD's change in definition offers powerful evidence of this shift.

As this Court demonstrated in *Hall*, the analysis begins by "consult[ing] the medical community's opinions." 572 U. S., at 710. "The legal determination of intellectual disability is distinct from a medical diagnosis, but it is informed by the medical community's diagnostic framework." *Id.,* at 721; see also *Moore* v. *Texas*, 581 U. S. ___, ___ (2017) (slip op., at 10) (emphasizing that our precedent does not "license disregard of current medical standards"). As noted, the AAIDD (relied upon in *Hall*) now has replaced its prior age-18 onset requirement with an age-22 onset requirement, evincing a clear shift. AAIDD Manual 1.[2] Similarly, the APA's Diagnostic and Statistical Manual of Mental Disorders (DSM) used to require an impairment to onset "'before age 18 years'" to meet the definition of an intellectual disability. *Atkins*, 536 U. S., at 308, n. 3 (quoting DSM–IV, p. 41 (4th ed. 2000)). However, in 2013, the manual's fifth edition (DSM–5) changed course, providing only that an impairment must onset "during the developmental period." *Hall*, 572 U. S., at 721 (citing DSM–5, at 33). The revisions to the AAIDD and APA definitions have aligned those definitions more closely with that of the American Psychological Association, another authority relied upon in *Hall*,

[2]This Court held in *Moore* that a state court on collateral review reversibly erred when it disregarded the AAIDD's definition of intellectual disability in favor of wholly nonclinical factors. 581 U. S., at ___.

which also sets the cutoff at age 22. Manual of Diagnosis and Professional Practice in Mental Retardation 13, 36 (1996). These three leading clinical pronouncements provide powerful evidence of medical consensus that cannot be disregarded. *Moore*, 581 U. S., at ___.

"[T]he legislative policies of various States" in defining intellectual disability are also central to the inquiry. *Hall*, 572 U. S., at 710. By my count, here, as in *Hall*, "in 41 States an individual in [Coonce's] position . . . would not be deemed automatically eligible for the death penalty." *Id.,* at 716.[3] Moreover, this aggregate number is "not the only

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[3]As follows, 41 States appear to eschew a rigid age-18 onset requirement. Two States impose no age-of-onset requirement in the *Atkins* context. Neb. Rev. Stat. §28–105.01(3) (Cum. Supp. 2014); Kan. Stat. §§21–6622(h), 76–12b01(d) (Cum. Supp. 2018); see *State* v. *Vela*, 279 Neb. 94, 151, 777 N. W. 2d 266, 307 (2010) (discussing Nebraska Legislature's choice to omit age-of-onset requirement). Two impose an age-22 onset requirement. See Ind. Code §35–36–9–2 (2021); Utah Code §77–15a–102(2) (2021). A fifth State, the Nation's most populous, recently amended its law to replace its rigid age-18 onset requirement with "the developmental period, as defined by clinical standards." Cal. Penal Code Ann. §1376(a)(1) (West Cum. Supp. 2021). A sixth dropped its rigid age-18 onset requirement in 2014. Compare La. Code Crim. Proc. Ann., Art. 905.5.1(H) (West 2014) (requiring onset "before the age of eighteen years") with La. Code Crim. Proc. Ann., Art. 905.5.1(H) (West Cum. Supp. 2021) (requiring onset "during the developmental period"). Three more States (totaling 9) similarly impose no rigid age-of-onset cutoff and require onset "during the developmental period," indicating flexibility and suggesting incorporation of the medical consensus. Ga. Code Ann. §17–7–131(a)(2) (2020); Ky. Rev. Stat. Ann. §532.130(2) (West 2016); S. C. Code Ann. §16–3–20(C)(b)(10) (2015); see also *Woodall* v. *Commonwealth*, 563 S. W. 3d 1, 7 (Ky. 2018) (emphasizing that in Kentucky, "prevailing medical standards should always take precedence in a court's determination"). Two more, Montana and Wyoming (totaling 11), have not adopted any rigid definition of intellectual disability in the criminal context. Twenty-three additional States (totaling 34) have abolished the death penalty, as has the District of Columbia. See *Roper* v. *Simmons*, 543 U. S. 551, 574 (2005) (teaching that States that have abandoned capital punishment should be considered as part of the consensus against

consideratio[n] bearing on a determination of consensus," *id.,* at 717; the "[c]onsistency of the direction of change," *ibid.*, also supports Coonce's position. In the last five years, five States (Colorado, Delaware, New Hampshire, Virginia, and Washington) have abolished the death penalty, and a

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its application). Two more States (totaling 36), Oregon and Pennsylvania, have suspended executions. See *Hall*, 572 U. S., at 716 (counting "Oregon, which has suspended the death penalty," as part of consensus against rigid 70-IQ rule).

Four States' courts of last resort have mentioned an age-18 onset requirement in the *Atkins* context, but relied on at least one medical definition that subsequently has changed. *State* v. *Ford*, 158 Ohio St. 3d 139, 146–148, 2019-Ohio-4539, 140 N. E. 3d 616, 647 (relying on AAIDD and APA standards in effect at the time); *Ex parte Lane*, 286 So. 3d 61, 63 (Ala. 2018) (same); *Chase* v. *State*, 171 So. 3d 463, 470 (Miss. 2015) (same); *Ex parte Briseno*, 135 S. W. 3d 1, 7 (Tex. Crim. App. 2004) (same), abrogated in part by *Moore*, 581 U. S., at ___. In addition, Nevada's highest court has defined the state legislature's flexible age-of-onset requirement ("during the developmental period," Nev. Rev. Stat. §174.098(7) (2017)) to require age-18 onset, again relying on AAIDD and APA definitions that are now outdated. *Ybarra* v. *State*, 127 Nev. 47, 53–54, 57–58, 247 P. 3d 269, 273–274, 276 (2011). Because these courts have defined intellectual disability for capital cases in direct reference to the medical consensus, it is far from clear that Coonce would be denied an *Atkins* hearing in these five States (totaling 41) solely because his impairments fully manifested at age 20. See *Moore*, 581 U. S., at ___, ___ (slip op., at 8, 17) (holding that "adherence to superseded medical standards," as opposed to reliance on "current manuals [which] offer the best available description of how mental disorders are expressed and can be recognized by trained clinicians," violated the Eighth Amendment (internal quotation marks omitted)).

Only nine States with capital punishment have adopted a statutory age-18 onset requirement for *Atkins* claims. See Ariz. Rev. Stat. Ann. §13–753(K)(3) (2020); Ark. Code Ann. §5–4–618(a)(1)(A) (Supp. 2021); Fla. Stat. §921.137(1) (2015); Idaho Code Ann. §19–2515A(1)(a) (2017); Mo. Rev. Stat. §565.030(6) (2016); N. C. Gen. Stat. Ann. §15A–2005(a)(1) (2019); Okla. Stat., Tit. 21, §701.10b(B) (Supp. 2020); S. D. Codified Laws §23A–27A–26.1 (Cum. Supp. 2019); Tenn. Code Ann. §39–13–203(a)(3) (Supp. 2021). There is no reason to assume that on reconsideration, the Eighth Circuit would necessarily side with this minority of jurisdictions.

sixth (California) recently repealed its rigid age-18 onset requirement and replaced it with "clinical standards." Cal. Penal Code Ann. §1376(a)(1) (effective Jan. 1, 2021). Three of these States (California, Colorado, and Virginia) enacted these reforms just during the pendency of Coonce's petition for certiorari.

On the whole, there is "strong evidence of consensus that our society does not regard this strict cutoff as proper or humane." *Hall*, 572 U. S., at 718. As the Government concedes, with the new information, there is at least "a reasonable probability" the Eighth Circuit would conclude that Coonce has demonstrated timely onset of his impairments. Brief in Opposition 13 (internal quotation marks omitted).

B

The Government also tells us that a redetermination by the Eighth Circuit "may determine the ultimate outcome" of Coonce's *Atkins* claim. Brief in Opposition 13 (internal quotation marks omitted). Indeed, even without a hearing, Coonce has produced convincing evidence on the first two prongs of intellectual disability. A defense psychologist who reviewed documentary evidence and administered a comprehensive battery of tests on Coonce across two 4-hour sessions determined that he had an IQ of 71, within the accepted range for intellectual disability. See *Moore*, 581 U. S., at ___ (IQ score of 74, accounting for standard error, required consideration of adaptive functioning); *Brumfield* v. *Cain*, 576 U. S. 305, 315 (2015) (state court unreasonably applied *Hall* in finding IQ score of 75 to preclude intellectual disability); *Hall*, 572 U. S., at 712–714 (if IQ score is close to 70, courts must account for "standard error of measurement"). Coonce therefore has put forth evidence to establish that he has "significantly subaverage intellectual functioning." *Id.*, at 710.

The remaining prong, deficits in adaptive functioning,

"requires an evaluation of the individual's ability to function across a variety of dimensions." *Brumfield*, 576 U. S., at 317. A defense expert's evaluation of Coonce identified significant impairments in memory, language, attention, reasoning, ability to organize information, and executive functioning. There is also evidence that Coonce was unable to hold employment, control his impulses, and function independently. Even in the regimented environment of prison, Coonce's attorneys represent that he continues to engage in self-mutilation, has proven unable to timely take medication, and cannot complete other basic tasks.[4]

In sum, if Coonce satisfies the age-of-onset requirement, he has a substantial likelihood of proving he has an intellectual disability.

III

In light of the above, the material change in the AAIDD's leading definition of intellectual disability plainly warrants a GVR. To my knowledge, the Court has never before denied a GVR in a capital case where both parties have requested it, let alone where a new development has cast the decision below into such doubt.

The Court has held that "[w]here intervening developments . . . reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and

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[4]That some "other evidence in the record . . . cut[s] against [Coonce's] claim" is no justification for denying a hearing, *Brumfield* v. *Cain*, 576 U. S. 305, 320 (2015), especially where that evidence was less than compelling. For example, a psychologist estimated Coonce's IQ at around 79 after his accident, while a Bureau of Prisons psychologist later estimated his IQ at around 77. However, neither of these estimates used tests designed to measure IQ. In contrast, the expert witness who calculated Coonce's IQ at 71 did so using the leading clinical instrument for conducting such testing. Even the Government's expert conceded that the defense expert's IQ testing was conducted properly and that there was no evidence of malingering.

where it appears that such a redetermination may determine the ultimate outcome of the litigation, a GVR order is . . . potentially appropriate." *Lords Landing Village Condominium Council of Unit Owners* v. *Continental Ins. Co.*, 520 U. S. 893, 896 (1997) (*per curiam*) (internal quotation marks omitted). The Government appropriately confesses that "[t]his case satisfies both criteria" and that, as a result, "[t]his Court should GVR." Brief in Opposition 12, 14.

Members of this Court have expressed additional views on the propriety of GVR orders.[5] Under any, a GVR was appropriate here. The parties have identified a new development with obvious legal bearing. The AAIDD definition was one of only two sources the Eighth Circuit consulted, and the court rejected Coonce's argument solely because, at the time, it was an unrealized "predictio[n] that medical experts will agree with Coonce's view in the future." 932 F. 3d, at 634. As the Government concedes, the realization of Coonce's "predictio[n]" surely presents a reasonable probability of a different outcome. Thus, the Government does not defend the judgment below.

Finally, in the Government's words, "[a] GVR order is

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[5] See, *e.g., Myers* v. *United States*, 587 U. S. ___, ___ (2019) (ROBERTS, C. J., dissenting) (slip op., at 2) (GVR unwarranted "[u]nless there is some new development to consider"); *Hicks* v. *United States*, 582 U. S. ___, ___ (2017) (GORSUCH, J., concurring) (slip op., at 2) (in cases involving unpreserved but plain errors, GVR appropriate "where we think there's a reasonable probability" that "curing the error will yield a different outcome"); *Stutson* v. *United States*, 516 U. S. 193, 198 (1996) (Scalia, J., dissenting with *Lawrence* v. *Chater*, 516 U. S. 163, 178, 191–192 (1996)) (GVR warranted "where an intervening factor has arisen that has a legal bearing upon the decision").

In *Myers*, unlike here, the Government endorsed the judgment below and requested GVR only because the lower court "made some mistakes in its legal analysis." 587 U. S., at ___ (slip op., at 1). *Hicks*, too, did not involve any new development. Rather, the Government sought to resuscitate a claim that the defendant had forfeited. 582 U. S., at ___ (ROBERTS, C. J., dissenting).

particularly warranted given the stakes in this capital context." Brief in Opposition 15. Coonce asserts an interest of constitutional dimension. He requests a meaningful opportunity to be heard on his claim that he has an intellectual disability, such that his execution would "violat[e] his . . . inherent dignity as a human being," threaten "the integrity of the trial process," and contravene the Eighth Amendment's prohibition on cruel and unusual punishment. *Hall*, 572 U. S., at 708, 709. The Court has issued GVR orders for far less.

This Court has long emphasized the "need for reliability in the determination that death is the appropriate punishment in a specific case." *Woodson* v. *North Carolina*, 428 U. S. 280, 305 (1976) (plurality opinion). A GVR was the least the Court could have done to protect this life-or-death interest.

* * *

I can only hope that the lower courts on collateral review will give Coonce the consideration that the Constitution demands. But this Court, too, has an obligation to protect our Constitution's mandates. It falls short of fulfilling that obligation today. The Court should have allowed the Eighth Circuit to reconsider Coonce's compelling claim of intellectual disability, as both he and the Government requested. I respectfully dissent.

SUPREME COURT OF THE UNITED STATES

AMERICAN CIVIL LIBERTIES UNION *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW

No. 20–1499. Decided November 1, 2021

The petition for a writ of certiorari is denied.

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

In response to allegations of wrongdoing by the Nation's intelligence agencies, in 1975 Congress convened a select committee chaired by Senator Frank Church to investigate. See S. Rep. No. 94–755, p. v (1976). Ultimately, the Church committee issued a report concluding that the federal government had, over many decades, "intentionally disregarded" legal limitations on its surveillance activities and "infringed the constitutional rights of American citizens." *Id.*, at 137.

In the wake of these findings, Congress enacted the Foreign Intelligence Surveillance Act of 1978. See 92 Stat. 1783 (codified at 50 U. S. C. §1801 *et seq.*). The statute created the Foreign Intelligence Surveillance Court (FISC) and empowered it to oversee electronic surveillance conducted for foreign intelligence purposes. See §1803(a). The statute also created the Foreign Intelligence Surveillance Court of Review (FISCR) to hear appeals from the FISC's rulings. The FISC now comprises 11 Article III federal district court judges, and the FISCR comprises 3 additional Article III judges. §§1803(a)–(b).

With changes in technology and thanks to various legislative amendments, these courts have come to play an increasingly important role in the Nation's life. Today, the

FISC evaluates extensive surveillance programs that carry profound implications for Americans' privacy and their rights to speak and associate freely. See, *e.g.*, *ACLU* v. *Clapper*, 785 F. 3d 787, 818 (CA2 2015). Like other courts, the FISC may announce its rulings in opinions that explain its interpretation of relevant statutory and constitutional law. Unlike most other courts, however, FISC holds its proceedings in secret and does not customarily publish its decisions. See §1803(c); *In re Motion for Release of Court Records*, 526 F. Supp. 2d 484, 488 (FISC 2007).

In 2016, the American Civil Liberties Union (ACLU) sought to test this practice. It filed motions with the FISC asserting that the First Amendment provides a qualified right of public access to opinions containing significant legal analysis—even if portions must be redacted. App. to Pet. for Cert. 21a. The ACLU argued that the FISC had authority to consider its motion pursuant to its inherent "power over its own records and files." *Id.*, at 18a (internal quotation marks omitted). The organization noted that other courts have a long history of exercising just this power to ensure public access to their judicial decisions. In the end, however, both the FISC and the FISCR refused the ACLU's request. In fact, they refused even to consider the question, claiming they lacked authority to do so. *Id.*, at 2a–7a (citing 50 U. S. C. §1803(k); 28 U. S. C. §1254(2)).

Now the ACLU has filed a petition for certiorari asking this Court to review these decisions. In response, the government does not merely argue that the lower court rulings should be left undisturbed because they are correct. The government also presses the extraordinary claim that this Court is powerless to review the lower court decisions even if they are mistaken. On the government's view, literally *no court* in this country has the power to decide whether citizens possess a First Amendment right of access to the work of our national security courts.

Today the Court declines to take up this matter. I would

hear it. This case presents questions about the right of public access to Article III judicial proceedings of grave national importance. Maybe even more fundamentally, this case involves a governmental challenge to the power of this Court to review the work of Article III judges in a subordinate court. If these matters are not worthy of our time, what is? Respectfully, I dissent.