

ORDERS FOR JUNE 14 THROUGH
SEPTEMBER 28, 2018

JUNE 14, 2018

Dismissal Under Rule 46

No. 17–57. PACIFIC GAS & ELECTRIC CO. ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 838 F. 3d 1341.

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Dismissals Under Rule 46

No. 16–581. LEIDOS, INC., FKA SAIC, INC. *v.* INDIANA PUBLIC RETIREMENT SYSTEM ET AL. C. A. 2d Cir. [Certiorari granted, 580 U.S. 1216.] Writ of certiorari dismissed under this Court's Rule 46.1.

No. 17–1327. DRAGON INTELLECTUAL PROPERTY, LLC *v.* DISH NETWORK LLC ET AL. C. A. Fed. Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 711 Fed. Appx. 993.

Certiorari Granted—Vacated and Remanded

No. 16–6259. GONZALEZ-LONGORIA *v.* UNITED STATES. C. A. 5th Cir. Petition for rehearing granted. The order entered May 14, 2018, [584 U.S. 976] denying petition for writ of certiorari vacated. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Sessions v. Dimaya*, 584 U.S. 148 (2018). Reported below: 831 F. 3d 670.

Certiorari Dismissed

No. 17–8955. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 703 Fed. Appx. 197.

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Miscellaneous Orders

No. 17M129. *KELLY v. UNITED STATES*. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 17M130. *SEALED APPELLANT v. SEALED APPELLEE*. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 17–1285. *ASSOCIATION DES ELEVEURS DE CANARDS ET D'OIES DU QUEBEC ET AL. v. BECERRA, ATTORNEY GENERAL OF CALIFORNIA*. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 17–7817. *WEI ZHOU v. MARQUETTE UNIVERSITY*. C. A. 7th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [584 U. S. 948] denied.

No. 17–8278. *BAMDAD v. UNITED STATES*. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [584 U. S. 957] denied.

No. 17–1586. *IN RE LYLES*. Petition for writ of habeas corpus denied.

No. 17–1454. *IN RE SCHEIDLER*. Petition for writ of mandamus denied.

No. 17–8469. *IN RE RAA*. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 17–949. *STURGEON v. FROST, ALASKA REGIONAL DIRECTOR OF THE NATIONAL PARK SERVICE, ET AL.* C. A. 9th Cir. Certiorari granted. Reported below: 872 F. 3d 927.

No. 17–1026. *GARZA v. IDAHO*. Sup. Ct. Idaho. Certiorari granted. Reported below: 162 Idaho 791, 405 P. 3d 576.

No. 17–1077. *LORENZO v. SECURITIES AND EXCHANGE COMMISSION*. C. A. D. C. Cir. Certiorari granted. Reported below: 872 F. 3d 578.

No. 17–1091. *TIMBS v. INDIANA*. Sup. Ct. Ind. Certiorari granted. Reported below: 84 N. E. 3d 1179.

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No. 17–204. *APPLE INC. v. PEPPER ET AL.* C. A. 9th Cir. Motions of ACT | The App Association and Washington Legal Foundation for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 846 F. 3d 313.

Certiorari Denied

No. 17–521. *LAZAR v. KRONCKE, AS ADMINISTRATOR OF THE ESTATE OF KRONCKE.* C. A. 9th Cir. Certiorari denied. Reported below: 862 F. 3d 1186.

No. 17–931. *MARTINEZ CAZUN v. SESSIONS, ATTORNEY GENERAL.* C. A. 3d Cir. Certiorari denied. Reported below: 856 F. 3d 249.

No. 17–955. *HARKNESS v. SPENCER, SECRETARY OF THE NAVY.* C. A. 6th Cir. Certiorari denied. Reported below: 858 F. 3d 437.

No. 17–970. *STANFORD v. BROWNE ET AL.* Sup. Ct. Nev. Certiorari denied. Reported below: 133 Nev. 1076, 402 P. 3d 1253.

No. 17–975. *TOTAL GAS & POWER NORTH AMERICA, INC., ET AL. v. FEDERAL ENERGY REGULATORY COMMISSION ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 859 F. 3d 325.

No. 17–984. *GARCIA GARCIA v. SESSIONS, ATTORNEY GENERAL.* C. A. 7th Cir. Certiorari denied. Reported below: 873 F. 3d 553.

No. 17–1007. *IGARTUA ET AL. v. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 842 F. 3d 149.

No. 17–1061. *RICHMOND v. COLEMAN CABLE, LLC, ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 690 Fed. Appx. 682.

No. 17–1098. *PARKINSON v. DEPARTMENT OF JUSTICE.* C. A. Fed. Cir. Certiorari denied. Reported below: 874 F. 3d 710.

No. 17–1105. *AMERICAN COMMERCIAL LINES, LLC v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 875 F. 3d 170.

No. 17–1142. *MICHIGAN GAMING CONTROL BOARD ET AL. v. MOODY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 871 F. 3d 420.

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No. 17-1151. *DUQUESNE LIGHT HOLDINGS, INC., ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 3d Cir. Certiorari denied. Reported below: 861 F. 3d 396.

No. 17-1154. *COLEMAN v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 706 Fed. Appx. 618.

No. 17-1212. *GARCIA GARCIA v. SESSIONS, ATTORNEY GENERAL*. C. A. 1st Cir. Certiorari denied. Reported below: 856 F. 3d 27.

No. 17-1225. *CAMPANELLI v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 2017 IL 120997, 104 N. E. 3d 325.

No. 17-1287. *ROBERTS ET AL. v. AT&T MOBILITY LLC*. C. A. 9th Cir. Certiorari denied. Reported below: 877 F. 3d 833.

No. 17-1291. *BOKF, N. A., AS FIRST LOAN TRUSTEE v. MOMENTIVE PERFORMANCE MATERIALS, INC., ET AL.*; and

No. 17-1292. *WILMINGTON TRUST, N. A., AS 1.5 LIEN TRUSTEE v. MOMENTIVE PERFORMANCE MATERIALS, INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 874 F. 3d 787.

No. 17-1392. *H. A. S. ELECTRICAL CONTRACTORS, INC. v. HEMPHILL CONSTRUCTION Co., INC.* Sup. Ct. Miss. Certiorari denied. Reported below: 232 So. 3d 117.

No. 17-1421. *OPTA CORP. ET AL. v. DAEWOO ELECTRONICS AMERICA, INC.* C. A. 9th Cir. Certiorari denied. Reported below: 875 F. 3d 1241.

No. 17-1425. *M. H. v. J. K.* Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 17-1433. *ELINZANO-GONZALES v. SESSIONS, ATTORNEY GENERAL*. C. A. 2d Cir. Certiorari denied. Reported below: 716 Fed. Appx. 29.

No. 17-1444. *ABERDEEN MARKETPLACE, INC. v. NANNI*. C. A. 4th Cir. Certiorari denied. Reported below: 878 F. 3d 447.

No. 17-1450. *BERGDOLL v. TORRES, ACTING PENNSYLVANIA SECRETARY OF STATE, ET AL.* Sup. Ct. Pa. Certiorari denied. Reported below: 644 Pa. 613, 177 A. 3d 875.

No. 17-1452. *DEN HOLLANDER v. CBS NEWS INC. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 710 Fed. Appx. 35.

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No. 17–1495. *ROBERTS v. FNB SOUTH OF ALMA, GEORGIA*. C. A. 11th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 854.

No. 17–1502. *MANN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 17–1504. *RICE v. INTERFOOD, INC., ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 415.

No. 17–1527. *CRAMPTON v. COMMISSION FOR LAWYER DISCIPLINE OF THE STATE BAR OF TEXAS*. Ct. App. Tex., 8th Dist. Certiorari denied. Reported below: 545 S. W. 3d 593.

No. 17–1531. *HAGER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 879 F. 3d 550.

No. 17–1539. *KINNEY v. CLARK*. Ct. App. Cal., 2d App. Dist., Div. 1. Certiorari denied.

No. 17–1540. *M. C., A MINOR, BY AND THROUGH HIS PARENT, D. C. v. OREGON DEPARTMENT OF EDUCATION*. C. A. 9th Cir. Certiorari denied. Reported below: 695 Fed. Appx. 302.

No. 17–1573. *CRAZY HORSE SALOON & RESTAURANT, INC., DBA THEE NEW DOLLHOUSE v. DEGIDIO, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED*. C. A. 4th Cir. Certiorari denied. Reported below: 880 F. 3d 135.

No. 17–1579. *BOUTTE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 17–7383. *ROBERSON v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 864 F. 3d 1118.

No. 17–7420. *HUGHES v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 694 Fed. Appx. 463.

No. 17–7458. *SWAGGERTY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 17–7542. *NEDD v. UNITED STATES*. C. A. 11th Cir. Certiorari denied.

No. 17–7645. *BOATWRIGHT v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 871.

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No. 17-7734. *MARTIN MENDOZA v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 706 Fed. Appx. 620.

No. 17-7773. *GRAFTON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 697 Fed. Appx. 672.

No. 17-7796. *DUNCAN v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 704 Fed. Appx. 914.

No. 17-7804. *McHALE v. CAIN, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION*. C. A. 9th Cir. Certiorari denied.

No. 17-7879. *ALEXANDER v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 919.

No. 17-8083. *RUNNELS v. DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION*. C. A. 5th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 371.

No. 17-8134. *ZACK v. FLORIDA ET AL.* Sup. Ct. Fla. Certiorari denied. Reported below: 228 So. 3d 41.

No. 17-8471. *BLAIR v. YUM! BRANDS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 697 Fed. Appx. 352.

No. 17-8473. *SIMMONS v. JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 17-8484. *PEREZ DUENAS v. WASHINGTON*. Ct. App. Wash. Certiorari denied. Reported below: 199 Wash. App. 1027.

No. 17-8489. *OHIO EX REL. MCKINNEY v. SCHMENK, JUDGE, DEFIANCE COUNTY COURT OF COMMON PLEAS*. Sup. Ct. Ohio. Certiorari denied. Reported below: 152 Ohio St. 3d 70, 2017-Ohio-9183, 92 N. E. 3d 871.

No. 17-8494. *TYLER v. OCWEN LOAN SERVICING, LLC, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 699 Fed. Appx. 423.

No. 17-8500. *ALVARADO v. JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL.* C. A. 3d Cir. Certiorari denied.

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No. 17–8504. *CARPENTER v. CITY OF CHICAGO, ILLINOIS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 630.

No. 17–8506. *BRIDGES v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2017 IL App (1st) 143539–U.

No. 17–8513. *VALDEZ PEREZ v. CALIFORNIA.* C. A. 9th Cir. Certiorari denied.

No. 17–8516. *O’NEAL v. CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS.* Sup. Ct. Va. Certiorari denied.

No. 17–8518. *RAMOS v. CONNECTICUT.* App. Ct. Conn. Certiorari denied. Reported below: 178 Conn. App. 400, 175 A. 3d 1265.

No. 17–8532. *SINGH ET AL. v. FERNANDES.* Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 16 Cal. App. 5th 932, 224 Cal. Rptr. 3d 751.

No. 17–8535. *BIGGS v. FERRERO.* C. A. 6th Cir. Certiorari denied.

No. 17–8536. *ARMAS v. OREGON.* Ct. App. Ore. Certiorari denied. Reported below: 284 Ore. App. 557, 392 P. 3d 834.

No. 17–8537. *BROADWAY v. VANNOY, WARDEN.* C. A. 5th Cir. Certiorari denied.

No. 17–8540. *COLE v. FLORIDA.* Sup. Ct. Fla. Certiorari denied. Reported below: 234 So. 3d 644.

No. 17–8541. *McHENRY v. PARKING VIOLATION BUREAU.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 17–8548. *CHILDRESS v. CITY OF CHARLESTON POLICE DEPARTMENT ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 706 Fed. Appx. 814.

No. 17–8556. *BONTRAGER v. COLORADO ATTORNEY REGULATION COUNSEL.* Sup. Ct. Colo. Certiorari denied.

No. 17–8566. *SANDIA v. WALMART STORES.* C. A. 2d Cir. Certiorari denied. Reported below: 699 Fed. Appx. 64.

No. 17–8586. *AHMED v. ARIZONA DEPARTMENT OF TRANSPORTATION ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 687 Fed. Appx. 672.

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No. 17–8635. *VRH v. CALIFORNIA*. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 17–8661. *STANSELL v. EPPINGER, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 17–8687. *BROOKS v. JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 722 Fed. Appx. 180.

No. 17–8757. *LEONARD v. OREGON ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 801.

No. 17–8776. *JOHNSON v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 238 So. 3d 788.

No. 17–8791. *RHINES v. SOUTH DAKOTA*. Sup. Ct. S. D. Certiorari denied.

No. 17–8878. *RAYBON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 867 F. 3d 625.

No. 17–8886. *CASILLAS PRIETO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 17–8890. *PHILLIPS v. TRUMP, PRESIDENT OF THE UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 17–8891. *McDUFF v. SECURITIES AND EXCHANGE COMMISSION*. C. A. 5th Cir. Certiorari denied. Reported below: 697 Fed. Appx. 393.

No. 17–8897. *LEE v. BEASLEY, WARDEN*. C. A. 8th Cir. Certiorari denied.

No. 17–8904. *HERRERA SANTA CRUZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 609 Fed. Appx. 265.

No. 17–8906. *HICKS v. FEDERAL BUREAU OF PRISONS*. C. A. 6th Cir. Certiorari denied.

No. 17–8912. *SALAZAR-VALENCIA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 288.

No. 17–8914. *RAMIREZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 663.

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No. 17–8925. *CLARK v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 418.

No. 17–8938. *GILLS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 702 Fed. Appx. 367.

No. 17–8943. *JONES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 721.

No. 17–8944. *LESCH v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 244.

No. 17–8945. *MATHIS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 396.

No. 17–8946. *MALDONADO v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 831.

No. 17–8950. *BENITEZ-REYNOSO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 718 Fed. Appx. 278.

No. 17–8952. *CHAPMAN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 794.

No. 17–8959. *GIBSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 875 F. 3d 179.

No. 17–8974. *BROWN v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 170 A. 3d 1208.

No. 17–8976. *COLBY v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 882 F. 3d 267.

No. 17–8984. *ALMONTE, AKA ANTONIO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 694 Fed. Appx. 35.

No. 17–8985. *GAY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 724 Fed. Appx. 122.

No. 17–8986. *BERGER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 697 Fed. Appx. 193.

No. 17–8987. *BERRY v. UNITED STATES*. C. A. 11th Cir. Certiorari denied.

No. 17–8993. *BREEDLOVE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 842.

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No. 17–9001. *LEWIS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 17–9003. *MORREO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 690 Fed. Appx. 992.

No. 17–9006. *CAZIMERO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 670.

No. 17–9008. *STANFORD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 689.

No. 17–9011. *WASHINGTON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 161.

No. 17–9013. *PASILLAS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 311.

No. 17–9017. *ALLEN v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 988.

No. 17–9020. *BOGAR v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 711 Fed. Appx. 246.

No. 17–9021. *COLON-RIVERA v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 711 Fed. Appx. 595.

No. 17–9026. *JARAMILLO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 17–1078. *PAULY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF PAULY, DECEASED, ET AL. v. WHITE ET AL.* C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 874 F. 3d 1197.

No. 17–1274. *RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS v. POYSON*. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 879 F. 3d 875.

No. 17–1501. *INTEGRIS HEALTH, INC. v. CATES*. Sup. Ct. Okla. Motion of American Hospital Association et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 2018 OK 9, 412 P. 3d 98.

No. 17–1521. *FURBER, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF FURBER, DECEASED v. TAYLOR ET AL.* C. A.

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10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 685 Fed. Appx. 674.

No. 17–8148. KACZMAR *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 228 So. 3d 1.

JUSTICE SOTOMAYOR, dissenting.

Like a number of other capital defendants in Florida, petitioner Leo Louis Kaczmar has raised an important Eighth Amendment challenge to his death sentence that went unaddressed by the Florida Supreme Court. Specifically, he argues that the jury instructions in his case impermissibly diminished the jurors’ sense of responsibility as to the ultimate determination of death, in violation of *Caldwell v. Mississippi*, 472 U. S. 320 (1985). I have thrice dissented from this Court’s unwillingness to intervene in the face of the Florida Supreme Court’s failure to address this important question. See *Guardado v. Florida*, 584 U. S. 922, (2018); *Middleton v. Florida*, 583 U. S. 1162, (2018); *Truehill v. Florida*, 583 U. S. 938, 939 (2017). Recently, “[i]n light of the dissenting opinions to the denial of certiorari,” the Florida Supreme Court in another capital case finally set out to “explicitly address” the *Caldwell* claim. *Reynolds v. State*, 251 So. 3d 811, 818, n. 8 (2018) (*per curiam*). The resulting opinion, however, gathered the support only of a plurality, so the issue remains without definitive resolution by the Florida Supreme Court. Thus, for the reasons previously stated in *Truehill*, *Middleton*, and *Guardado*, I again respectfully dissent from the denial of certiorari.

No. 17–8486. RUIZ-RIVERA *v.* ASSURED GUARANTEE CORP. ET AL. C. A. 1st Cir. Certiorari before judgment denied.

No. 17–8487. RUIZ-RIVERA *v.* LEX CLAIMS, LLC, ET AL. C. A. 1st Cir. Certiorari before judgment denied.

No. 17–8992. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Granted. (See No. 16–6259, 585 U. S. 1001.)

Rehearing Denied

No. 17–1038. IN RE DOUCE, 584 U. S. 903;

No. 17–1075. SCOPELLITI *v.* CITY OF TAMPA, FLORIDA, 583 U. S. 1182;

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No. 17–1199. *WILSON v. HAWAII ET AL.*, 584 U. S. 932;
No. 17–1253. *BEAVERS v. SCHNEIDER NATIONAL, INC.*, 584 U. S. 978;
No. 17–6978. *FREDERICK v. PENNSYLVANIA*, 583 U. S. 1125;
No. 17–7474. *GOUCH-ONASSIS v. CALIFORNIA*, 584 U. S. 906;
No. 17–7680. *BURKE v. FURTADO*, 584 U. S. 919;
No. 17–7943. *STANLEY v. WASHINGTON*, 584 U. S. 965; and
No. 17–8220. *RUSSELL v. FLORIDA*, 584 U. S. 955. Petitions for rehearing denied.

No. 17–7709. *ALCORTA v. UNITED STATES*, 583 U. S. 1207. Petition for rehearing denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition.

JUNE 25, 2018

Vacated and Remanded on Appeal

No. 17–1295. *RUCHO ET AL. v. COMMON CAUSE ET AL.* Appeal from D. C. M. D. N. C. Judgment vacated, and case remanded for further consideration in light of *Gill v. Whitford*, *ante*, p. 48. Reported below: 279 F. Supp. 3d 587.

Certiorari Granted—Vacated and Remanded

No. 16–9541. *CLARK v. LOUISIANA*. Sup. Ct. La. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McCoy v. Louisiana*, 584 U. S. 414 (2018). Reported below: 2012–0508 (La. 12/19/16), 220 So. 3d 583.

No. 16–9608. *RENTERIA-MARTINEZ v. UNITED STATES*. C. A. 5th Cir. Reported below: 847 F. 3d 297;

No. 17–6389. *CRUZ-PENA v. UNITED STATES*. C. A. 5th Cir. Reported below: 700 Fed. Appx. 338;

No. 17–6556. *ANTHONY v. UNITED STATES*. C. A. 5th Cir. Reported below: 693 Fed. Appx. 380;

No. 17–6805. *AGUSTIN-GARCIA v. UNITED STATES*. C. A. 5th Cir. Reported below: 699 Fed. Appx. 391; and

No. 17–7261. *RUIZ-DOMINGUEZ v. UNITED STATES*. C. A. 5th Cir. Reported below: 713 Fed. Appx. 273. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Rosales-Mireles v. United States*, *ante*, p. 129.

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No. 17–108. ARLENE’S FLOWERS, INC., DBA ARLENE’S FLOWERS AND GIFTS, ET AL. *v.* WASHINGTON ET AL. Sup. Ct. Wash. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 584 U.S. 617 (2018). Reported below: 187 Wash. 2d 804, 389 P. 3d 543.

No. 17–7779. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Reported below: 876 F. 3d 812;

No. 17–7781. RAMIREZ GALVAN *v.* UNITED STATES. C. A. 5th Cir. Reported below: 699 Fed. Appx. 314;

No. 17–7793. RAMIREZ-HIDALGO *v.* UNITED STATES. C. A. 5th Cir. Reported below: 707 Fed. Appx. 850; and

No. 17–8109. RUBIO-SORTO *v.* UNITED STATES. C. A. 5th Cir. Reported below: 707 Fed. Appx. 239. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Sessions v. Dimaya*, 584 U.S. 148 (2018).

Certiorari Dismissed

No. 17–8557. ROSE *v.* UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court’s Rule 39.8.

No. 17–8682. GILLESPIE *v.* REVERSE MORTGAGE SOLUTIONS. Sup. Ct. Fla. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court’s Rule 39.8.

No. 17–8689. GILLESPIE *v.* REVERSE MORTGAGE SOLUTIONS ET AL. Sup. Ct. Fla. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court’s Rule 39.8.

No. 17–9028. SCOTTON *v.* UNITED STATES (two judgments). C. A. 11th Cir. Certiorari denied. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court’s Rule 39.8.

Miscellaneous Orders

No. D–3013. IN RE DISBARMENT OF SIEGEL. Disbarment entered. [For earlier order herein, see 584 U.S. 912.]

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No. D-3015. IN RE DISBARMENT OF BASSI. Disbarment entered. [For earlier order herein, see 584 U. S. 912.]

No. D-3016. IN RE DISBARMENT OF BRAZIL. Disbarment entered. [For earlier order herein, see 584 U. S. 912.]

No. D-3017. IN RE DISBARMENT OF CRAWFORD. Disbarment entered. [For earlier order herein, see 584 U. S. 913.]

No. D-3018. IN RE DISBARMENT OF GASKINS. Disbarment entered. [For earlier order herein, see 584 U. S. 913.]

No. D-3019. IN RE DISBARMENT OF LANDRY. Disbarment entered. [For earlier order herein, see 584 U. S. 913.]

No. D-3020. IN RE DISBARMENT OF DENRICH. Disbarment entered. [For earlier order herein, see 584 U. S. 913.]

No. D-3021. IN RE DISBARMENT OF SMITH. Disbarment entered. [For earlier order herein, see 584 U. S. 913.]

No. D-3023. IN RE DISBARMENT OF NYCE. Disbarment entered. [For earlier order herein, see 584 U. S. 929.]

No. D-3024. IN RE DISBARMENT OF TERRELL. Disbarment entered. [For earlier order herein, see 584 U. S. 913.]

No. D-3025. IN RE DISBARMENT OF ANDREWS. Disbarment entered. [For earlier order herein, see 584 U. S. 913.]

No. D-3026. IN RE DISBARMENT OF HARRELL. Disbarment entered. [For earlier order herein, see 584 U. S. 914.]

No. D-3027. IN RE DISBARMENT OF LOUDON. Disbarment entered. [For earlier order herein, see 584 U. S. 914.]

No. 17M131. KALIN THANH DAO *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 17-1165. DE CSEPEL ET AL. *v.* REPUBLIC OF HUNGARY ET AL. C. A. D. C. Cir.; and

No. 17-1301. HARVEY ET AL. *v.* UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION ET AL. Sup. Ct. Utah. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

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No. 17–8084. *KOCH v. CITY OF SARGENT, NEBRASKA*. Ct. App. Neb. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [584 U. S. 949] denied.

No. 17–8616. *HARDEN v. MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL.* C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until July 16, 2018, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 17–9155. *IN RE WILLIAMS*. Petition for writ of habeas corpus denied.

No. 17–8811. *IN RE MASON*. Petition for writ of mandamus denied.

No. 17–8965. *IN RE ALLAH*. 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. 16–1094. *REPUBLIC OF SUDAN v. HARRISON ET AL.* C. A. 2d Cir. Certiorari granted. Reported below: 802 F. 3d 399.

No. 16–1498. *WASHINGTON STATE DEPARTMENT OF LICENSING v. COUGAR DEN, INC.* Sup. Ct. Wash. Certiorari granted. Reported below: 188 Wash. 2d 55, 392 P. 3d 1014.

No. 17–1094. *NUTRACEUTICAL CORP. v. LAMBERT*. C. A. 9th Cir. Certiorari granted. Reported below: 870 F. 3d 1170.

No. 17–1184. *BIESTEK v. BERRYHILL, DEPUTY COMMISSIONER FOR OPERATIONS, SOCIAL SECURITY ADMINISTRATION*. C. A. 6th Cir. Certiorari granted. Reported below: 880 F. 3d 778.

No. 17–1229. *HELSINN HEALTHCARE S. A. v. TEVA PHARMACEUTICALS USA, INC., ET AL.* C. A. Fed. Cir. Certiorari granted. Reported below: 855 F. 3d 1356.

No. 17–1272. *HENRY SCHEIN, INC., ET AL. v. ARCHER & WHITE SALES, INC.* C. A. 5th Cir. Certiorari granted. Reported below: 878 F. 3d 488.

No. 17–419. *DAWSON ET UX. v. STEAGER, WEST VIRGINIA STATE TAX COMMISSIONER*. Sup. Ct. App. W. Va. Certiorari

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granted limited to the question presented by the Solicitor General in his brief for the United States as *amicus curiae*.

Certiorari Denied

No. 16–163. WYNN LAS VEGAS, LLC, ET AL. *v.* CESARZ ET AL.; and

No. 16–920. NATIONAL RESTAURANT ASSN. ET AL. *v.* DEPARTMENT OF LABOR ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 816 F. 3d 1080.

No. 17–528. STRANG *v.* FORD MOTOR COMPANY GENERAL RETIREMENT PLAN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 693 Fed. Appx. 400.

No. 17–1041. SHERIDAN *v.* ORTEGA MELENDRES ET AL. C. A. 9th Cir. Certiorari denied.

No. 17–1058. SNR WIRELESS LICENSECo, LLC, ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 868 F. 3d 1021.

No. 17–1060. UNITED STATES EX REL. CARTER *v.* HALLIBURTON Co. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 866 F. 3d 199.

No. 17–1093. REED *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 541 S. W. 3d 759.

No. 17–1134. ELLISON ET AL. *v.* UNITED STATES; and

No. 17–7809. SWENSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 704 Fed. Appx. 616.

No. 17–1150. CHUNG HOU HSIAO *v.* HAZUDA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 869 F. 3d 1034.

No. 17–1153. SIERRA PACIFIC INDUSTRIES, INC., ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 862 F. 3d 1157.

No. 17–1172. DASSEY *v.* DITTMANN. C. A. 7th Cir. Certiorari denied. Reported below: 877 F. 3d 297.

No. 17–1180. UNION PACIFIC RAILROAD Co. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 7th Cir. Certiorari denied. Reported below: 867 F. 3d 843.

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No. 17–1243. *SPECIALTY FERTILIZER PRODUCTS, LLC v. SHELL OIL CO. ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 700 Fed. Appx. 1006.

No. 17–1251. *CASEY v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 881 F. 3d 232.

No. 17–1279. *BERNSTEIN, SHUR, SAWYER & NELSON, P. A., ET AL. v. SNOW.* Sup. Jud. Ct. Me. Certiorari denied. Reported below: 2017 ME 239, 176 A. 3d 729.

No. 17–1300. *FINDLAY ET AL. v. FEDERAL HOUSING FINANCE AGENCY*; and

No. 17–1302. *NOMURA SECURITIES INTERNATIONAL, INC., ET AL. v. FEDERAL HOUSING FINANCE AGENCY.* C. A. 2d Cir. Certiorari denied. Reported below: 873 F. 3d 85.

No. 17–1304. *RODRIGUEZ VAZQUEZ v. SESSIONS, ATTORNEY GENERAL.* C. A. 5th Cir. Certiorari denied. Reported below: 885 F. 3d 862.

No. 17–1309. *UNIVERSAL PROCESSING SERVICES OF WISCONSIN, LLC v. FEDERAL TRADE COMMISSION.* C. A. 11th Cir. Certiorari denied. Reported below: 877 F. 3d 1234.

No. 17–1314. *RAZA ET AL. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 876 F. 3d 604.

No. 17–1328. *PRESTON ET AL. v. ACOSTA, SECRETARY OF LABOR.* C. A. 11th Cir. Certiorari denied. Reported below: 873 F. 3d 877.

No. 17–1330. *SHARP IMAGE GAMING, INC. v. SHINGLE SPRINGS BAND OF MIWOK INDIANS.* Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 15 Cal. App. 5th 391, 223 Cal. Rptr. 3d 362.

No. 17–1357. *FIVE STAR SENIOR LIVING INC., FKA FIVE STAR QUALITY CARE, INC., ET AL. v. MANDVIWALA.* C. A. 9th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 415.

No. 17–1443. *SECURITY PEOPLE, INC. v. OJMAR US, LLC.* C. A. Fed. Cir. Certiorari denied. Reported below: 702 Fed. Appx. 982.

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No. 17–1457. *MACDONALD v. LAWYERS BOARD OF PROFESSIONAL RESPONSIBILITY*. Sup. Ct. Minn. Certiorari denied. Reported below: 906 N. W. 2d 238.

No. 17–1462. *REDDI v. HUGHES & HUGHES LLP ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 695 Fed. Appx. 279.

No. 17–1467. *GEDDES ET AL. v. PEOPLE’S COUNSEL OF BALTIMORE COUNTY ET AL.* Ct. Sp. App. Md. Certiorari denied. Reported below: 232 Md. App. 726 and 735.

No. 17–1468. *WILLISTON v. VASTERLING ET AL.* Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 536 S. W. 3d 321.

No. 17–1475. *BEASON v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 17–1482. *WOODHULL v. MASCARELLA, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF FALVO, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 699 Fed. Appx. 872.

No. 17–1488. *TIMBES v. DEUTSCHE BANK NATIONAL TRUST CO. ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 971.

No. 17–1489. *BRADDOCK v. JOLIE ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 691 Fed. Appx. 318.

No. 17–1496. *RINGGOLD ET AL. v. SANKARY ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 17–1500. *WILLIAMS v. 21ST MORTGAGE CORP. ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 704 Fed. Appx. 302.

No. 17–1525. *SEGALINE v. WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES ET AL.* Ct. App. Wash. Certiorari denied. Reported below: 199 Wash. App. 748, 400 P. 3d 1281.

No. 17–1526. *DAVIDSON ET AL. v. FAIRCHILD CONTROLS CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 882 F. 3d 180.

No. 17–1558. *ODOM v. ADGER ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 185.

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No. 17–1567. *JENSEN v. OBENLAND*, SUPERINTENDENT, MONROE CORRECTIONAL COMPLEX. C. A. 9th Cir. Certiorari denied. Reported below: 705 Fed. Appx. 657.

No. 17–1577. *BEST ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied. Reported below: 702 Fed. Appx. 615.

No. 17–1583. *BALES v. UNITED STATES*. C. A. Armed Forces. Certiorari denied. Reported below: 77 M. J. 268.

No. 17–1585. *BUGONI v. O'BRIEN ET AL.* Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 236 So. 3d 1094.

No. 17–1593. *SUBWAY RESTAURANTS, INC. v. WARCIAK*. C. A. 7th Cir. Certiorari denied. Reported below: 880 F. 3d 870.

No. 17–1597. *MULLARKEY v. KAUFFMAN*, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 17–6790. *WINGO v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 306 Kan. 995, 399 P. 3d 190.

No. 17–7141. *YOUNG v. OCASIO*, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 17–7282. *HUEY v. KANSAS* (Reported below: 306 Kan. 1005, 399 P. 3d 211); *WEIS v. KANSAS* (306 Kan. xii, 399 P. 3d 872); *GRIFFIN v. KANSAS* (306 Kan. xi, 399 P. 3d 872); *VILLA v. KANSAS* (306 Kan. xii, 399 P. 3d 872); and *WATKINS v. KANSAS* (306 Kan. 1093, 401 P. 3d 607). Sup. Ct. Kan. Certiorari denied.

No. 17–7301. *MEREDITH v. KANSAS* (Reported below: 306 Kan. 906, 399 P. 3d 859); *HILL v. KANSAS* (306 Kan. 1043, 399 P. 3d 218); *DONALDSON v. KANSAS* (306 Kan. 998, 399 P. 3d 870); *HIRSCHBERG v. KANSAS* (306 Kan. 1002, 399 P. 3d 216); *BURDICK v. KANSAS* (306 Kan. 1036, 399 P. 3d 192); *BROWN v. KANSAS* (306 Kan. x, 399 P. 3d 872); *RICHARDSON v. KANSAS* (307 Kan. 2, 404 P. 3d 671); and *SCUDERI v. KANSAS* (306 Kan. 1267, 403 P. 3d 1206). Sup. Ct. Kan. Certiorari denied.

No. 17–7459. *SCOTT v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 160.

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No. 17-7592. *CHANNEY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 17-7785. *STEVENS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied.

No. 17-8003. *SIMMONS v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 307 Kan. 38, 405 P. 3d 1190.

No. 17-8188. *GROUP v. ROBINSON, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 17-8344. *THARPE v. SELLERS, WARDEN*. Sup. Ct. Ga. Certiorari denied.

No. 17-8428. *REAVES v. JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 872 F. 3d 1137.

No. 17-8572. *SUGHRUE v. FLORIDA ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 895.

No. 17-8574. *JACOBS v. ESTEFAN*. C. A. 11th Cir. Certiorari denied. Reported below: 705 Fed. Appx. 829.

No. 17-8575. *LINEHAN v. PIPER*. C. A. 8th Cir. Certiorari denied.

No. 17-8577. *BAILEY v. GARDNER ET AL.* C. A. 4th Cir. Certiorari denied.

No. 17-8578. *BAILEY v. BLAKE ET AL.* C. A. 4th Cir. Certiorari denied.

No. 17-8579. *BRANNAN v. KANSAS*. Ct. App. Kan. Certiorari denied. Reported below: 54 Kan. App. 2d xviii, 394 P. 3d 155.

No. 17-8580. *ADAMS v. BAILEY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 697 Fed. Appx. 294.

No. 17-8581. *BICKHAM v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2017 IL App (1st) 142894-U.

No. 17-8582. *BAILEY v. CUMBERLAND COUNTY, NORTH CAROLINA, ET AL.* C. A. 4th Cir. Certiorari denied.

No. 17-8589. *RAFAY v. WASHINGTON*. Ct. App. Wash. Certiorari denied.

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No. 17–8592. *RODRIGUEZ v. DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE. CORRECTIONAL INSTITUTIONS DIVISION.* C. A. 5th Cir. Certiorari denied.

No. 17–8593. *BROOKS v. RAEMISCH, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 766.

No. 17–8596. *DEKOM v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.* C. A. D. C. Cir. Certiorari denied.

No. 17–8597. *STEVENSON v. BISBEE ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 696 Fed. Appx. 250.

No. 17–8609. *MANUEL LOPEZ v. CITY OF SANTA ANA, CALIFORNIA, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 401.

No. 17–8610. *LEPON v. IOWA.* Ct. App. Iowa. Certiorari denied. Reported below: 908 N. W. 2d 880.

No. 17–8613. *THOMAS v. FLORIDA.* C. A. 11th Cir. Certiorari denied. Reported below: 706 Fed. Appx. 653.

No. 17–8620. *K. H. v. WISCONSIN* (Reported below: 2017 WI App 56, 377 Wis. 2d 729, 902 N. W. 2d 809); *A. S. F. v. WISCONSIN* (2017 WI App 56, 377 Wis. 2d 730, 902 N. W. 2d 810); and *M. W. v. WISCONSIN* (2017 WI App 56, 377 Wis. 2d 730, 902 N. W. 2d 810). Ct. App. Wis. Certiorari denied.

No. 17–8622. *PAVON v. TEXAS.* Ct. App. Tex., 1st Dist. Certiorari denied.

No. 17–8641. *BOYD v. CITIMORTGAGE INC.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 17–8644. *MARTIN v. SINCLAIR COMMUNITY COLLEGE ET AL.* C. A. 6th Cir. Certiorari denied.

No. 17–8652. *JONES v. FLORIDA.* Sup. Ct. Fla. Certiorari denied. Reported below: 234 So. 3d 545.

No. 17–8656. *BEACHEM v. FLORIDA DEPARTMENT OF REVENUE, ON BEHALF OF THOMAS.* Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 241 So. 3d 823.

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No. 17–8657. *BASSETT v. HORTON, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 17–8685. *BELL v. INOVA HEALTH CARE, DBA INOVA FAIRFAX HOSPITAL* (two judgments). Sup. Ct. Va. Certiorari denied.

No. 17–8702. *BRADLEY v. WISCONSIN DEPARTMENT OF CHILDREN AND FAMILIES ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 549.

No. 17–8741. *LING ZHUANG v. APPELLATE DIVISION, SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL.* Ct. App. Cal., 2d App. Dist., Div. 5. Certiorari denied.

No. 17–8742. *MORALES v. JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 362.

No. 17–8758. *KHALIL v. SESSIONS, ATTORNEY GENERAL*. C. A. 6th Cir. Certiorari denied.

No. 17–8825. *WALKER v. FLORIDA*. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 17–8854. *FISH v. ELON PROPERTY MANAGEMENT*. Sup. Ct. Fla. Certiorari denied.

No. 17–8868. *MATTISON v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 17–8907. *JEANBART v. FLORIDA*. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 236 So. 3d 427.

No. 17–8929. *ISOM v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 236 So. 3d 1054.

No. 17–8934. *HAWKINS v. KAUFFMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 17–8941. *KENNEL v. GRIFFITH, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 873 F. 3d 637.

No. 17–8964. *BURTON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 17–8966. *AVILA-LUNA v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

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No. 17–8969. *NOE v. DANIELS, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 17–8975. *BUXTON v. ESTOCK, ACTING SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MERCER, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 17–8978. *JOSEPH v. UNITED STATES*. C. A. 11th Cir. Certiorari denied.

No. 17–8979. *AMODEO v. UNITED STATES*. C. A. 11th Cir. Certiorari denied.

No. 17–8980. *BLANCHARD v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 867 F. 3d 1.

No. 17–8982. *OWENS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 711 Fed. Appx. 722.

No. 17–9009. *WILSON v. GAETZ ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 700 Fed. Appx. 540.

No. 17–9029. *SMITH v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 882 F. 3d 460.

No. 17–9033. *RILEY v. CALLOWAY, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 882 F. 3d 738.

No. 17–9037. *GOPPHIN v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 971.

No. 17–9039. *PLAKETTA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 677.

No. 17–9042. *JACKSON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 17–9043. *FYKES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 17–9049. *SUBLETT v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 380.

No. 17–9050. *SALVADOR v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 670.

No. 17–9053. *TIZOC v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 885 F. 3d 516.

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No. 17–9055. *OLIVIER v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 888.

No. 17–9057. *AGUDO-MONROY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 705 Fed. Appx. 666.

No. 17–9059. *RIVERA-CRUZ v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 878 F. 3d 404.

No. 17–9061. *REYES-RAMIREZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 678.

No. 17–9065. *CHAMBERS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 882 F. 3d 1305.

No. 17–9066. *FLOYD v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 17–9067. *DAVIS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 578.

No. 17–9068. *BOAZ v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 884 F. 3d 808.

No. 17–9070. *PINA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 309.

No. 17–9083. *COOKE v. DELAWARE*. Sup. Ct. Del. Certiorari denied. Reported below: 181 A. 3d 152.

No. 17–9129. *MAGEE v. LOUISIANA*. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 2016–1074 (La. App. 1 Cir. 4/12/17).

No. 17–423. *STERBA ET UX. v. PNC BANK*. C. A. 9th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 852 F. 3d 1175.

No. 17–1159. *NORTHERN ARAPAHO TRIBE ET AL. v. WYOMING ET AL.*; and

No. 17–1164. *EASTERN SHOSHONE TRIBE v. WYOMING ET AL.* C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of these petitions. Reported below: 875 F. 3d 505.

No. 17–1354. *GELHAUS v. ESTATE OF LOPEZ, BY AND THROUGH SUCCESSOR IN INTEREST, LOPEZ, ET AL.* C. A. 9th Cir. Motions of Peace Officers’ Research Association of Califor-

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nia et al., California State Sheriffs' Association et al., Force Litigation Consulting LLC et al., and International Municipal Lawyers Association et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 871 F. 3d 998.

No. 17-1439. VEY *v.* TYSKIEWIEZ. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 668 Fed. Appx. 427.

No. 17-7869. MARSHALL *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Motion of Promise of Justice Initiative for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 226 So. 3d 211.

No. 17-8491. PEEDE *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 923.

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

In his petition for writ of habeas corpus under 28 U. S. C. § 2254, petitioner Robert Peede contended that he received ineffective assistance of counsel during his capital sentencing proceedings because his trial counsel did not present certain mitigating evidence concerning his mental health and difficult childhood. The District Court granted habeas relief on the basis that counsel's performance was deficient and that there was a reasonable probability that Peede would have received a different sentence had counsel introduced the mitigating evidence. On appeal from that decision, the Court of Appeals for the Eleventh Circuit reversed. In its view, Peede could not establish that he was prejudiced by any deficiency of counsel because the "new mitigation evidence . . . posed a doubled-edge-sword dilemma" in that "the new information could have hurt as much as it helped." *Peede v. Attorney General of Fla.*, 715 Fed. Appx. 923, 931 (2017). The Eleventh Circuit further noted that it "ha[s] repeatedly ruled that [such so-called double-edged] post-conviction evidence is usually insufficient to warrant habeas relief." *Id.*, at 931-932.

Such a blanket rule foreclosing a showing of prejudice because the new evidence is double edged flatly contradicts this Court's precedent. See *Rompilla v. Beard*, 545 U. S. 374, 393 (2005); *Wiggins v. Smith*, 539 U. S. 510, 534 (2003); *Williams v. Taylor*, 529

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U. S. 362, 398 (2000). As I recently emphasized in dissent from the denial of certiorari in *Trevino v. Davis*, 584 U. S. 1019 (2018), “[w]here . . . new evidence presented during postconviction proceedings includes both mitigating and aggravating factors, a court still must consider all of the mitigating evidence alongside all of the aggravating evidence.” *Id.*, at 1021. That is, “new evidence must not be evaluated in isolation,” regardless of whether it is considered to be double edged. *Ibid.*

Considering the posture of this case, under which our review is constrained by the Antiterrorism and Effective Death Penalty Act of 1996, 28 U. S. C. §§ 2254(d)(1)–(2), I cannot conclude the particular circumstances here warrant this Court’s intervention. That said, the Eleventh Circuit’s consideration of Peede’s claim is deeply concerning. The ultimate question at issue in a case like this is whether “there is a reasonable probability that [the jury] would have struck a different balance.” *Wiggins*, 539 U. S., at 537. A truncated consideration of new mitigating evidence that simply dismisses it as double edged does nothing to further that inquiry.

No. 17–8627. *ARLOTTA v. COOK MOVING SYSTEM, INC., ET AL.* C. A. 2d Cir. Certiorari before judgment denied.

No. 17–8643. *KERSEY v. BECTON DICKINSON & CO. ET AL.* C. A. 1st Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

Rehearing Denied

No. 17–1362. *SCHNEIDER v. COMMISSIONER OF INTERNAL REVENUE*, 584 U. S. 963;

No. 17–6721. *ONTIVEROS-CEDILLO v. UNITED STATES*; and *BOLANOS-GALVAN, AKA ALVARAD, AKA GALVAN BOLANOS, AKA BOLANOS GALVAN v. UNITED STATES*, 584 U. S. 980;

No. 17–7918. *IN RE COLEN*, 584 U. S. 958;

No. 17–8167. *SPALDING v. UNITED STATES*, 584 U. S. 956; and

No. 17–8204. *SAID v. COMMISSIONER OF INTERNAL REVENUE*, 584 U. S. 955. Petitions for rehearing denied.

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Certiorari Denied

No. 17–9559 (17A1412). *BIBLE v. DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS*

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DIVISION, 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, denied. Certiorari denied. Reported below: 739 Fed. Appx. 766.

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Affirmed on Appeal

No. 16–166. HARRIS ET AL. *v.* COOPER, GOVERNOR OF NORTH CAROLINA, ET AL. Affirmed on appeal from D. C. M. D. N. C.

Certiorari Granted—Reversed and Remanded. (See No. 17–742, *ante*, p. 957; and No. 17–1106, *ante*, p. 961.)

Certiorari Granted—Vacated and Remanded

No. 16–1146. A WOMAN’S FRIEND PREGNANCY RESOURCE CLINIC ET AL. *v.* BECERRA, ATTORNEY GENERAL OF CALIFORNIA. C. A. 9th Cir. Reported below: 669 Fed. Appx. 495;

No. 16–1153. LIVINGWELL MEDICAL CLINIC, INC., ET AL. *v.* BECERRA, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Reported below: 669 Fed. Appx. 493;

No. 17–211. MOUNTAIN RIGHT TO LIFE, INC., DBA PREGNANCY AND FAMILY RESOURCE CENTER, ET AL. *v.* BECERRA, ATTORNEY GENERAL OF CALIFORNIA. C. A. 9th Cir. Reported below: 692 Fed. Appx. 807; and

No. 17–976. CTIA–THE WIRELESS ASSN. *v.* CITY OF BERKELEY, CALIFORNIA, ET AL. C. A. 9th Cir. Reported below: 854 F. 3d 1105. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *National Institute of Family and Life Advocates v. Becerra*, *ante*, p. 775.

No. 16–9187. SOLANO-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Reported below: 847 F. 3d 170; and

No. 16–9587. VILLARREAL-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Reported below: 685 Fed. Appx. 297. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Rosales-Mireles v. United States*, *ante*, p. 129, and for consideration of question whether cases are moot.

No. 17–166. ZANDERS *v.* INDIANA. Sup. Ct. Ind. Certiorari granted, judgment vacated, and case remanded for further consid-

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eration in light of *Carpenter v. United States*, ante, p. 296. Reported below: 73 N. E. 3d 178.

No. 17–981. RIFFEY ET AL. v. RAUNER, GOVERNOR OF ILLINOIS, ET AL. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Janus v. State, County, and Municipal Employees*, ante, p. 878. Reported below: 873 F. 3d 558.

No. 17–1050. SALDANA CASTILLO v. SESSIONS, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Pereira v. Sessions*, ante, p. 198. Reported below: 693 Fed. Appx. 647.

No. 17–1194. INTERNATIONAL REFUGEE ASSISTANCE PROJECT ET AL. v. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.; and

No. 17–1270. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. v. INTERNATIONAL REFUGEE ASSISTANCE PROJECT ET AL. C. A. 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Trump v. Hawaii*, ante, p. 667. Reported below: 883 F. 3d 233.

No. 17–1356. KAUSHAL v. INDIANA. Ct. App. Ind. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Jae Lee v. United States*, 582 U. S. 357 (2017). Reported below: 87 N. E. 3d 56.

JUSTICE ALITO, with whom JUSTICE THOMAS joins, dissenting.

The Court grants, vacates, and remands this case in light of *Jae Lee v. United States*, 582 U. S. 357 (2017). But *Lee* was handed down on June 23, 2017—almost a month before the Indiana Court of Appeals issued its decision in this case. Moreover, petitioner admits that he cited and advanced arguments based on *Lee* in both his petition for rehearing before the Indiana Court of Appeals and his petition for transfer to the Indiana Supreme Court. Reply Brief 3. I would accordingly deny the petition for the reasons stated in Justice Scalia’s dissenting opinion in *Webster v. Cooper*, 558 U. S. 1039, 1040 (2009).

No. 17–5402. REED v. VIRGINIA. Sup. Ct. Va.;

No. 17–5692. CHAMBERS, AKA SEALED DEFENDANT v. UNITED STATES. C. A. 2d Cir. Reported below: 681 Fed. Appx. 72;

No. 17–6213. HANKSTON v. TEXAS. Ct. Crim. App. Tex. Reported below: 517 S. W. 3d 112; and

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No. 17–6704. *BANKS v. UNITED STATES*. C. A. 10th Cir. Reported below: 706 Fed. Appx. 455. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Carpenter v. United States*, ante, p. 296.

No. 17–5964. *THOMPSON v. UNITED STATES*. C. A. 10th 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 *Carpenter v. United States*, ante, p. 296. JUSTICE GORSUCH took no part in the consideration or decision of this motion and this petition. Reported below: 866 F. 3d 1149.

Certiorari Granted

No. 17–532. *HERRERA v. WYOMING*. Dist. Ct. Wyo., Sheridan County. Certiorari granted.

No. 17–571. *FOURTH ESTATE PUBLIC BENEFIT CORP. v. WALL-STREET.COM, LLC, ET AL.* C. A. 11th Cir. Certiorari granted. Reported below: 856 F. 3d 1338.

No. 17–646. *GAMBLE v. UNITED STATES*. C. A. 11th Cir. Certiorari granted. Reported below: 694 Fed. Appx. 750.

No. 17–1174. *NIEVES ET AL. v. BARTLETT*. C. A. 9th Cir. Certiorari granted. Reported below: 712 Fed. Appx. 613.

No. 17–1299. *FRANCHISE TAX BOARD OF CALIFORNIA v. HYATT*. Sup. Ct. Nev. Certiorari granted. Reported below: 133 Nev. 826, 407 P. 3d 717.

No. 17–1307. *OBDUSKEY v. MCCARTHY & HOLTHUS LLP*. C. A. 10th Cir. Certiorari granted. Reported below: 879 F. 3d 1216.

No. 17–290. *MERCK SHARP & DOHME CORP. v. ALBRECHT ET AL.* C. A. 3d Cir. Certiorari granted. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 852 F. 3d 268.

Certiorari Denied

No. 16–6308. *GRAHAM v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 824 F. 3d 421.

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No. 16–6761. *CAIRA v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 833 F. 3d 803.

No. 16–7314. *ANTONIO RIOS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 830 F. 3d 403.

No. 16–9536. *ALEXANDER v. UNITED STATES*. C. A. Armed Forces. Certiorari denied. Reported below: 76 M. J. 336.

No. 17–243. *ABDIRAHMAN v. UNITED STATES* (Reported below: 76 M. J. 337); *ALIRAD v. UNITED STATES* (76 M. J. 343); *AVERETT v. UNITED STATES* (76 M. J. 345); *AYERS v. UNITED STATES* (76 M. J. 340); *BAILON v. UNITED STATES* (76 M. J. 345); *BANKS v. UNITED STATES* (76 M. J. 341); *BARDIN v. UNITED STATES* (76 M. J. 410); *BARKSDALE v. UNITED STATES* (76 M. J. 340); *BENJAMIN v. UNITED STATES* (76 M. J. 339); *BENNETT v. UNITED STATES* (76 M. J. 337); *BERG v. UNITED STATES* (76 M. J. 345); *BICKERSTAFF v. UNITED STATES* (76 M. J. 342); *BIRDSONG v. UNITED STATES* (76 M. J. 338); *BLAKESLEY v. UNITED STATES* (76 M. J. 338); *BONILLA v. UNITED STATES* (76 M. J. 335); *BOYD v. UNITED STATES* (76 M. J. 348); *BRIGGS v. UNITED STATES* (76 M. J. 338); *BROOKSHIRE v. UNITED STATES* (76 M. J. 341); *BROWN v. UNITED STATES* (76 M. J. 337); *BUCKNER v. UNITED STATES* (76 M. J. 341); *BULLOCK v. UNITED STATES* (76 M. J. 345); *BUSTAMONTE v. UNITED STATES* (76 M. J. 342); *CARROLL v. UNITED STATES* (76 M. J. 338); *CHARLES v. UNITED STATES* (76 M. J. 344); *COKER v. UNITED STATES* (76 M. J. 342); *COLEMAN v. UNITED STATES* (76 M. J. 338); *COOPER v. UNITED STATES* (76 M. J. 336); *COTTNER v. UNITED STATES* (76 M. J. 341); *CREWS v. UNITED STATES* (76 M. J. 350); *CUELLAR v. UNITED STATES* (76 M. J. 398); *CURRY v. UNITED STATES* (76 M. J. 339); *DAVENPORT v. UNITED STATES* (76 M. J. 340); *DAVIS v. UNITED STATES* (76 M. J. 344); *DEJESUS v. UNITED STATES* (76 M. J. 398); *DELVALLE v. UNITED STATES* (76 M. J. 342); *DOHERTY v. UNITED STATES* (76 M. J. 344); *DONOHUE v. UNITED STATES* (76 M. J. 337); *DORRIS v. UNITED STATES* (76 M. J. 343); *DOUGLAS v. UNITED STATES* (76 M. J. 342); *DUNHAM v. UNITED STATES* (76 M. J. 340); *EARLE v. UNITED STATES* (76 M. J. 403); *ECHOLS v. UNITED STATES* (76 M. J. 338); *ENTZMINGER v. UNITED STATES* (76 M. J. 345); *ERIKSON v. UNITED STATES* (76 M. J. 231); *FLETCHER v. UNITED STATES* (76 M. J. 338); *FOGLE v. UNITED STATES* (76 M. J. 341); *FRANCISCO v. UNITED STATES* (76 M. J. 339); *GALVAN v. UNITED STATES* (76 M. J. 344); *GARCIA v. UNITED STATES* (76 M. J. 344); *GARMAN v. UNITED STATES* (76 M. J. 403); *GEORGE v. UNITED STATES* (76 M. J. 345); *GIRAU v.*

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UNITED STATES (76 M. J. 337); *GORE v. UNITED STATES* (76 M. J. 398); *GOSS v. UNITED STATES* (76 M. J. 354); *GREENE v. UNITED STATES* (76 M. J. 352); *GREYTUNKL v. UNITED STATES* (76 M. J. 339); *GRIFFITH v. UNITED STATES* (76 M. J. 338); *GUICE v. UNITED STATES* (76 M. J. 341); *HERCULES v. UNITED STATES* (76 M. J. 341); *HIRSCH v. UNITED STATES* (76 M. J. 345); *HO v. UNITED STATES* (76 M. J. 337); *HODGE v. UNITED STATES* (76 M. J. 337); *HUERTALopez v. UNITED STATES* (76 M. J. 345); *HUGHES v. UNITED STATES* (76 M. J. 343); *HUMBURD v. UNITED STATES* (76 M. J. 342); *JEFFERS v. UNITED STATES* (76 M. J. 339); *JEWELL v. UNITED STATES* (76 M. J. 336); *JIMINEZ-VICTORIA v. UNITED STATES* (76 M. J. 354); *JOHNSON v. UNITED STATES* (76 M. J. 340); *JONES v. UNITED STATES* (76 M. J. 339); *KARGBO v. UNITED STATES* (76 M. J. 403); *KELLEY v. UNITED STATES* (76 M. J. 342); *KIDD v. UNITED STATES* (76 M. J. 343); *KISSELL v. UNITED STATES* (76 M. J. 335); *KNOOP v. UNITED STATES* (76 M. J. 349); *KOENIG v. UNITED STATES* (76 M. J. 411); *KOTH v. UNITED STATES* (76 M. J. 401); *KUNDRADURHAM v. UNITED STATES* (76 M. J. 401); *LAND v. UNITED STATES* (76 M. J. 342); *LAVASSEUR v. UNITED STATES* (76 M. J. 338); *LAYTON v. UNITED STATES* (76 M. J. 338); *LEROY v. UNITED STATES* (76 M. J. 341); *LEWIS v. UNITED STATES* (76 M. J. 341); *LOWREY v. UNITED STATES* (76 M. J. 340); *LUNA v. UNITED STATES* (76 M. J. 341); *MAESTRE v. UNITED STATES* (76 M. J. 341); *MAEZ v. UNITED STATES* (76 M. J. 354); *MAIRENA v. UNITED STATES* (76 M. J. 345); *MAJETICH v. UNITED STATES* (76 M. J. 345); *MARKLEY v. UNITED STATES* (76 M. J. 342); *MARTIN v. UNITED STATES* (76 M. J. 344); *MASTON v. UNITED STATES* (76 M. J. 345); *MAYDONEY v. UNITED STATES* (76 M. J. 338); *MAZZIE v. UNITED STATES* (76 M. J. 345); *McFADDEN v. UNITED STATES* (76 M. J. 401); *McGOWAN v. UNITED STATES* (76 M. J. 338); *MECKER v. UNITED STATES* (76 M. J. 339); *MEDRANO v. UNITED STATES* (76 M. J. 354); *MELVIN v. UNITED STATES* (76 M. J. 338); *MILLAY v. UNITED STATES* (76 M. J. 342); *MINER v. UNITED STATES* (76 M. J. 343); *MONTOYA v. UNITED STATES* (76 M. J. 349); *MORRILL v. UNITED STATES* (76 M. J. 341); *MURDORF v. UNITED STATES* (76 M. J. 345); *MURPHY v. UNITED STATES* (76 M. J. 336); *NATAREN v. UNITED STATES* (76 M. J. 342); *NEALY v. UNITED STATES* (76 M. J. 341); *NYANGAU v. UNITED STATES* (76 M. J. 338); *O'CONNOR v. UNITED STATES* (76 M. J. 341); *ORAGE v. UNITED STATES* (76 M. J. 345); *OSCAR v. UNITED STATES* (76 M. J. 336); *OZOSKEY v. UNITED STATES* (76 M. J. 409); *PATTERSON v. UNITED STATES* (76 M. J. 345); *PEREZ v. UNITED STATES* (76 M. J.

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341); *PERRY v. UNITED STATES* (76 M. J. 401); *PIMENTEL v. UNITED STATES* (76 M. J. 337); *PISZCZ v. UNITED STATES* (76 M. J. 344); *PODOBNIK v. UNITED STATES* (76 M. J. 341); *PRETLOW v. UNITED STATES* (76 M. J. 340); *PREWITT v. UNITED STATES* (76 M. J. 337); *RAMIREZ v. UNITED STATES* (76 M. J. 336); *REED v. UNITED STATES* (76 M. J. 345); *RHODES v. UNITED STATES* (76 M. J. 341); *RICHARDSON-HOEG v. UNITED STATES* (76 M. J. 336); *RICH v. UNITED STATES* (76 M. J. 338); *RILEY v. UNITED STATES* (76 M. J. 342); *RILEY v. UNITED STATES* (76 M. J. 336); *RIOS v. UNITED STATES* (76 M. J. 341); *ROBINSON v. UNITED STATES* (76 M. J. 401); *ROCHFORD v. UNITED STATES* (76 M. J. 338); *ROSADO DEJESUS v. UNITED STATES* (76 M. J. 351); *SADLER v. UNITED STATES* (76 M. J. 336); *SAMPSON v. UNITED STATES* (76 M. J. 345); *SANDS v. UNITED STATES* (76 M. J. 338); *SANTUCCI v. UNITED STATES* (76 M. J. 341); *SHARPE v. UNITED STATES* (76 M. J. 401); *SHAVE v. UNITED STATES* (76 M. J. 345); *SLATER v. UNITED STATES* (76 M. J. 345); *SMITH v. UNITED STATES* (76 M. J. 342); *SMITH v. UNITED STATES* (76 M. J. 339); *SMITH v. UNITED STATES* (76 M. J. 345); *SOLT v. UNITED STATES* (76 M. J. 401); *SORIA v. UNITED STATES* (76 M. J. 341); *SPRIGGS v. UNITED STATES* (76 M. J. 343); *STANFORD v. UNITED STATES* (76 M. J. 398); *STANLEY v. UNITED STATES* (76 M. J. 341); *STREMPER v. UNITED STATES* (76 M. J. 342); *SUTTON v. UNITED STATES* (76 M. J. 337); *TAYLOR v. UNITED STATES* (76 M. J. 338); *THOMAS v. UNITED STATES* (76 M. J. 344); *THOMPSON v. UNITED STATES* (76 M. J. 344); *THREAT v. UNITED STATES* (76 M. J. 345); *THREET v. UNITED STATES* (76 M. J. 339); *TONEY v. UNITED STATES* (76 M. J. 402); *TORRES-GARZA v. UNITED STATES* (76 M. J. 345); *TREJO v. UNITED STATES* (76 M. J. 342); *TYSON v. UNITED STATES* (76 M. J. 340); *VIERA v. UNITED STATES* (76 M. J. 339); *VILLAR v. UNITED STATES* (76 M. J. 344); *WARREN v. UNITED STATES* (76 M. J. 341); *WATFORD v. UNITED STATES* (76 M. J. 351); *WATKINS v. UNITED STATES* (76 M. J. 337); *WHITE v. UNITED STATES* (76 M. J. 341); *WILLIAMS v. UNITED STATES* (76 M. J. 341); *WILLIAMS v. UNITED STATES* (76 M. J. 344); and *WILSON v. UNITED STATES* (76 M. J. 345). C. A. Armed Forces. Certiorari denied.

No. 17–425. *WASS v. IDAHO*. Sup. Ct. Idaho. Certiorari denied. Reported below: 162 Idaho 361, 396 P. 3d 1243.

No. 17–701. *RICHARDS v. UNITED STATES*. C. A. Armed Forces. Certiorari denied. Reported below: 76 M. J. 365.

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No. 17–840. *CASH v. UNITED STATES* (Reported below: 76 M. J. 438); *GURCZYNSKI v. UNITED STATES* (76 M. J. 441); and *WILLIAMS v. UNITED STATES* (77 M. J. 64). C. A. Armed Forces. Certiorari denied.

No. 17–950. *ULBRICHT v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 858 F. 3d 71.

No. 17–1002. *UNITED STATES v. UNION PACIFIC RAILROAD CO.* C. A. 8th Cir. Certiorari denied. Reported below: 865 F. 3d 1045.

No. 17–1087. *FIRST RESORT, INC. v. HERRERA ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 860 F. 3d 1263.

No. 17–1369. *MAYOR AND CITY COUNCIL OF BALTIMORE ET AL. v. GREATER BALTIMORE CENTER FOR PREGNANCY CONCERNS, INC.* C. A. 4th Cir. Certiorari denied. Reported below: 879 F. 3d 101.

No. 17–5943. *RILEY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 858 F. 3d 1012.

No. 17–6256. *PATRICK v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 842 F. 3d 540.

No. 17–6892. *WILFORD v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 689 Fed. Appx. 727.

No. 17–7220. *BORMUTH v. JACKSON COUNTY, MICHIGAN*. C. A. 6th Cir. Certiorari denied. Reported below: 870 F. 3d 494.

No. 17–7769. *GRAY v. UNITED STATES*. C. A. Armed Forces. Certiorari denied. Reported below: 77 M. J. 5.

No. 16–1189. *E. I. DU PONT DE NEMOURS & CO. ET AL. v. SMILEY ET AL.* C. A. 3d Cir. Motions of Cato Institute and Pacific Legal Foundation et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of these motions and this petition. Reported below: 839 F. 3d 325.

Statement of JUSTICE GORSUCH, with whom THE CHIEF JUSTICE and JUSTICE THOMAS join, respecting the denial of certiorari.

Can an agency advance an interpretation of a statute for the first time in litigation and then demand deference for its view?

There is a well-defined circuit split on the question. The Court of Appeals in this case said yes, joining several other circuits who share that view. 839 F. 3d 325, 329, 333–334 (CA3 2016) (case below); *SEC v. Rosenthal*, 650 F. 3d 156, 160 (CA2 2011); *TVA v. Whitman*, 336 F. 3d 1236, 1250 (CA11 2003); *Dania Beach v. FAA*, 628 F. 3d 581, 586–587 (CA11 2010). But “[t]wo circuits, the Sixth and Ninth, expressly deny *Skidmore* deference to agency litigation interpretations, and the Seventh does so implicitly.” Hubbard, Comment, Deference to Agency Statutory Interpretations First Advanced in Litigation? The *Chevron* Two-Step and the *Skidmore* Shuffle, 80 U. Chi. L. Rev. 447, 462 (2013) (footnotes omitted); *Smith v. Aegon Companies Pension Plan*, 769 F. 3d 922, 929 (CA6 2014); *Alaska v. Federal Subsistence Bd.*, 544 F. 3d 1089, 1095 (CA9 2008); *In re UAL Corp. (Pilots’ Pension Plan Termination)*, 468 F. 3d 444, 449–450 (CA7 2006).

The issue surely qualifies as an important one. After all, *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), deference only makes a difference when the court would not otherwise reach the same interpretation as the agency. And a number of scholars and *amici* have raised thoughtful questions about the propriety of affording that kind of deference to agency litigation positions. For example, how are people to know if their conduct is permissible when they act if the agency will only tell them later during litigation? Don’t serious equal protection concerns arise when an agency advances an interpretation only in litigation with full view of who would benefit and who would be harmed? Might the practice undermine the Administrative Procedure Act’s structure by incentivizing agencies to regulate by *amicus* brief, rather than by rule? Should we be concerned that some agencies (including the one before us) have apparently become particularly aggressive in “attempt[ing] to mold statutory interpretation and establish policy by filing ‘friend of the court’ briefs in private litigation”? Eisenberg, Regulation by *Amicus*: The Department of Labor’s Policy Making in the Courts, 65 Fla. L. Rev. 1223 (2013); see also, *e.g.*, Hickman & Krueger, In Search of the Modern *Skidmore* Standard, 107 Colum. L. Rev. 1235, 1303 (2007); Pierce, Democratizing the Administrative State, 48 Wm. & Mary L. Rev. 559, 606–607 (2006); Merrill, Judicial Deference to Executive Precedent, 101 Yale L. J. 969, 1010–1011 (1992).

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Respectfully, I believe this circuit split and these questions warrant this Court's attention. If not in this case then, hopefully, soon.

No. 16–6694. *JORDAN v. UNITED STATES*. C. A. 4th Cir. Motion of respondent for leave to file brief in opposition under seal with redacted copies for the public record granted. Certiorari denied. Reported below: 824 F. 3d 421.

No. 17–475. *SECURITIES AND EXCHANGE COMMISSION v. BANDIMERE*. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 844 F. 3d 1168.

No. 17–565. *ROWAN COUNTY, NORTH CAROLINA v. LUND ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 863 F. 3d 268.

JUSTICE THOMAS, with whom JUSTICE GORSUCH joins, dissenting.

This Court's Establishment Clause jurisprudence is in disarray. Sometimes our precedents focus on whether a "reasonable observer" would think that a government practice endorses religion; other times our precedents focus on whether a government practice is supported by this country's history and tradition. See *Utah Highway Patrol Assn. v. American Atheists, Inc.*, 565 U. S. 994, 997–1001 (2011) (THOMAS, J., dissenting from denial of certiorari); *Van Orden v. Perry*, 545 U. S. 677, 694–697 (2005) (THOMAS, J., concurring). Happily, our precedents on legislative prayer tend to fall in the latter camp. See, e.g., *Town of Greece v. Galloway*, 572 U. S. 565 (2014); *Marsh v. Chambers*, 463 U. S. 783 (1983).

Yet the decision below did not adhere to this historical approach. In ruling that Rowan County must change the prayers it uses to open its board meetings, the Court of Appeals for the Fourth Circuit emphasized that the county's prayers are led by the legislators themselves, not by paid chaplains or guest ministers. This analysis failed to appreciate the long history of legislator-led prayer in this country, and it squarely contradicted a recent decision of the Sixth Circuit. I would have granted Rowan County's petition for certiorari.

I

Rowan County, North Carolina, is governed by a five-member Board of Commissioners (Board). The Board convenes twice a month, in meetings that are open to the public. Each meeting begins with a prayer, which the commissioners take turns leading. Prayers usually begin with an invitation (“Let us pray,” “Let’s pray together,” “Please pray with me”) and end with a communal “Amen.” Because the current commissioners are all Christians, their prayers tend to reference “Jesus,” “Christ,” or the “Savior.” But the Board does not require the commissioners to profess any particular religion, or require the prayers to have any particular content. The content of the prayer is entirely up to the commissioner giving it.

Three residents of Rowan County, who were offended by the Board’s prayers, sued the county, alleging violations of the Establishment Clause. The District Court entered summary judgment in the residents’ favor, 103 F. Supp. 3d 712, 713 (MDNC 2015), but a divided panel of the Fourth Circuit reversed, 837 F. 3d 407, 411 (2016). On rehearing en banc, the full Fourth Circuit affirmed the District Court’s initial decision. 863 F. 3d 268, 275 (2017).

Disagreeing with the earlier panel, the en banc court began by distinguishing this Court’s decision in *Town of Greece*, which upheld the prayer policy of the town of Greece in New York. The prayers in Greece were given by “guest ministers,” the Fourth Circuit explained, while the prayers in Rowan County are given by the commissioners. See 863 F. 3d, at 277–278. The Fourth Circuit deemed legislator-led prayer more suspect under the Establishment Clause because it “identifies the government with religion more strongly” and “heightens the constitutional risks posed by requests to participate and by sectarian prayers.” *Id.*, at 278. Since the prayers in Rowan County are legislator led, the Fourth Circuit concluded that *Town of Greece* does not apply and, thus, it “must decide whether [Rowan] [C]ounty’s prayer practice, taken as a whole,” is constitutional. 863 F. 3d, at 280.

The Fourth Circuit held that it was not, for a “combination” of four reasons. *Id.*, at 281. First, the prayers in Rowan County are given exclusively by the commissioners. *Id.*, at 281–282. Second, of the 143 prayers that the Fourth Circuit analyzed, 139 “invoked” Christianity, only four were nonsectarian, and at least

11 “‘promote[d]” Christianity. *Id.*, at 283–286. Third, the commissioners “told attendees to rise and often invited them to pray.” *Id.*, at 286. Fourth, and finally, the prayers took place in “the intimate setting of a municipal board meeting,” where the Board often exercises “quasi-adjudicatory power over such granular issues as zoning petitions, permit applications, and contract awards.” *Id.*, at 287–288.

For these four reasons, the Fourth Circuit held that Rowan County’s prayer practice violated the Establishment Clause. Five judges dissented, contending that the Fourth Circuit’s decision was inconsistent with this Court’s precedents and this country’s “long and varied tradition of lawmaker-led prayer.” See *id.*, at 301–323 (opinion of Agee, J.).

II

I would have granted certiorari in this case. The Fourth Circuit’s decision is both unfaithful to our precedents and ahistorical. It also conflicts with a recent en banc decision of the Sixth Circuit.

While the Fourth Circuit stated that a “combination” of factors made the Board’s prayers unconstitutional, *id.*, at 281, virtually all of the factors it identified were present in *Town of Greece*. The Fourth Circuit noted that the Board’s prayers were typically Christian and occasionally promoted Christianity at the expense of other religions. But so did the prayers in *Town of Greece*. See 572 U.S., at 578–586. The Fourth Circuit stressed that the commissioners often asked attendees to rise and invited them to pray. But the prayergivers in *Town of Greece* made the same invitations. See *id.*, at 588–589 (plurality opinion). The Fourth Circuit thought that audience members would be pressured to participate in the prayers, given the intimate setting of Board meetings and its adjudicatory authority. But these same pressures were present in *Town of Greece*. See *id.*, at 586; *id.*, at 610 (THOMAS, J., concurring in part and concurring in judgment).

The only real difference between this case and *Town of Greece* is the person leading the prayer. Prayers in Rowan County are led by the commissioners, while prayers in Greece are led by guest ministers. The Fourth Circuit leaned heavily on this distinction to justify conducting its own free-floating evaluation of Rowan County’s prayers. See 863 F. 3d, at 280. But what it should have done, under our precedents, is examine whether “his-

tory shows that the specific practice [of legislator-led prayer] is permitted.” *Town of Greece, supra*, at 577. If the Fourth Circuit had conducted that inquiry, it would have found a rich historical tradition of legislator-led prayer.

For as long as this country has had legislative prayer, legislators have led it. Prior to Independence, the South Carolina Provincial Congress appointed one of its members to lead the body in prayer. See Brief for State of West Virginia et al. as *Amici Curiae* 9 (States Brief). Several States, including West Virginia and Illinois, opened their constitutional conventions with prayers led by convention members instead of chaplains. See Brief for Members of Congress as *Amici Curiae* 10 (Congress Brief). The historical evidence shows that Congress and state legislatures have opened legislative sessions with legislator-led prayer for more than a century. See States Brief 8–19; Congress Brief 8–9. In short, the Founders simply “did not intend to prohibit a just expression of religious devotion by the legislators of the nation, even in their public character as legislators.” S. Rep. No. 376, 32d Cong., 2d Sess., 4 (1853).*

The Sixth Circuit, also sitting en banc, recently surveyed this history and upheld a municipal prayer policy virtually identical to Rowan County’s. See *Bormuth v. County of Jackson*, 870 F. 3d 494 (2017). The Sixth Circuit acknowledged that its decision was “in conflict with the Fourth Circuit’s” but found the latter “unpersuasive,” *id.*, at 509, n. 5—not least because the Fourth Circuit “apparently did not consider the numerous examples of [legislator-led] prayers” in our Nation’s history, *id.*, at 510. Thus, the Sixth and Fourth Circuits are now split on the legality of legislator-led prayer. State and local lawmakers can lead prayers in Tennessee, Kentucky, Ohio, and Michigan, but not in South Carolina, North Carolina, Virginia, Maryland, or West Virginia. This Court should have stepped in to resolve this conflict.

I respectfully dissent.

*In addition to having little basis in history, the Fourth Circuit’s decision has little basis in logic. It is hard to see how prayers led by sectarian chaplains whose salaries are paid by taxpayers—a practice this Court has upheld, see *Marsh v. Chambers*, 463 U.S. 783 (1983)—could be *less* of a government establishment than prayers voluntarily given by legislators. See *Bormuth v. County of Jackson*, 870 F. 3d 494, 523 (CA6 2017) (en banc) (Sutton, J., concurring).

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No. 17–7153. JORDAN *v.* MISSISSIPPI; and

No. 17–7245. EVANS *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: No. 17–7153, 224 So. 3d 1252; No. 17–7245, 226 So. 3d 1.

JUSTICE BREYER, dissenting.

In my dissenting opinion in *Glossip v. Gross*, 576 U.S. 863 (2015), I described how the death penalty, as currently administered, suffers from unconscionably long delays, arbitrary application, and serious unreliability. *Id.*, at 909. I write to underline the ways in which the two cases currently before us illustrate the first two of these problems and to highlight additional evidence that has accumulated over the past three years suggesting that the death penalty today lacks “requisite reliability.” *Id.*, at 910.

I

The petitioner in the first case, Richard Gerald Jordan, was sentenced to death nearly 42 years ago. He argues that his execution after such a lengthy delay violates the Eighth Amendment’s prohibition on “cruel and unusual punishments.” I continue to believe this question merits the Court’s attention. See *id.*, at 923–938; *Boyer v. Davis*, 578 U.S. 965 (2016) (BREYER, J., dissenting from denial of certiorari) (“Richard Boyer was initially sentenced to death 32 years ago”); *Ruiz v. Texas*, 580 U.S. 1191 (2017) (BREYER, J., dissenting from denial of stay of execution) (“Petitioner Rolando Ruiz has been on death row for 22 years, most of which he has spent in permanent solitary confinement”); *Lackey v. Texas*, 514 U.S. 1045, 1046 (1995) (Stevens, J., memorandum respecting denial of certiorari) (discussing petitioner’s “17 years under a sentence of death”).

More than a century ago, the Court described a prisoner’s 4-week wait prior to execution as “one of the most horrible feelings to which [a person] can be subjected.” *In re Medley*, 134 U.S. 160, 172 (1890). What explains the more than 4-decade wait in this case? Between 1976 and 1986, each of Jordan’s first three death sentences was vacated on constitutional grounds, including by this Court. See *Jordan v. Mississippi*, 476 U.S. 1101 (1986) (vacating death sentence and remanding case in light of *Skipper v. South Carolina*, 476 U.S. 1 (1986)); see also Brief in Opposition in No. 17–7153, pp. 4–5 (“Jordan was originally convicted and automatically sentenced to death” in July 1976—the same month that this Court held mandatory death sentences unconstitutional in *Woodson v. North Carolina*, 428 U.S. 280 (1976) (emphasis

added)). In 1998, Jordan was sentenced to death for the fourth time. (He had entered into a plea agreement providing for a sentence of life without parole, but the Mississippi Supreme Court invalidated that agreement and the prosecutor refused to reinstate it. See *Jordan v. Fisher*, 576 U. S. 1071 (2015) (SOTOMAYOR, J., dissenting from denial of certiorari).)

Jordan has lived more than half of his life on death row. He has been under a death sentence “longer than any other Mississippi inmate.” 224 So. 3d 1252, 1253 (Miss. 2017). The petition states that since 1977, Jordan has been incarcerated in the Mississippi State Penitentiary and spent “most of that time on death row living in isolated, squalid conditions.” Pet. for Cert. in No. 17–7153, p. 11; see also *ibid.* (citing *Gates v. Cook*, 376 F. 3d 323, 332–335 (CA5 2004) (holding that the conditions of confinement on Mississippi State Penitentiary’s death row violate the Eighth Amendment)); Robles, *The Marshall Project, Condemned to Death—and Solitary Confinement* (July 23, 2017) (reporting based upon a nationwide survey of state corrections officials that Mississippi is 1 among 20 States that permit death row inmates “less than four hours of out-of-cell recreation time each day”), <https://www.themarshallproject.org/2017/07/23/condemned-to-death-and-solitary-confinement> (all Internet materials as last visited June 27, 2018); cf. *Davis v. Ayala*, 576 U. S. 257, 286–287 (2015) (KENNEDY, J., concurring) (noting that “the usual pattern” of solitary confinement involves “a windowless cell no larger than a typical parking spot” for up to “23 hours a day”). This Court has repeated that such conditions bear “‘a further terror and peculiar mark of infamy’ [that is] added to the punishment of death.” *In re Medley*, 134 U. S., at 170. Such “additional punishment,” the Court has said, is “of the most important and painful character.” *Id.*, at 171. In my view, the conditions in which Jordan appears to have been confined over the past four decades reinforce the Eighth Amendment concern raised in his petition.

Jordan, now 72 years old, is one among an aging population of death row inmates who remain on death row for ever longer periods of time. Over the past decade, the percentage of death row prisoners aged 60 or older has increased more than twofold from around 7% in 2008 to more than 16% of the death row population by the most recent estimate. Compare Dept. of Justice, Bureau of Justice Statistics, T. Snell, *Capital Punishment, 2008—Statistical Tables* (rev. Jan. 2010) (Table 7), with Dept. of Justice, Bureau of Justice Statistics, E. Davis & T. Snell, *Capital*

Punishment, 2016, p. 7 (Apr. 2018) (Table 4) (Davis & Snell). Meanwhile, the average period of imprisonment between death sentence and execution has risen from a little over 6 years in 1988 to more than 11 years in 2008 to more than 19 years over the past year. See Dept. of Justice, Bureau of Justice Statistics, T. Snell, Capital Punishment, 2013—Statistical Tables, p. 14 (rev. Dec. 19, 2014) (Table 10); Death Penalty Information Center (DPIC), Execution List 2018, <https://deathpenaltyinfo.org/execution-list-2018>; DPIC, Execution List 2017, <https://deathpenaltyinfo.org/execution-list-2017>; see also F. Baumgartner et al., Deadly Justice: A Statistical Portrait of the Death Penalty 161, 168, Fig. 8.1 (2018) (analyzing recent data showing that “nationally, each passing year is associated with approximately 125 additional days of delay from crime to execution”).

II

In addition, both Richard Jordan’s case and that of Timothy Nelson Evans, the second petitioner here, illustrate the problem of arbitrariness. To begin with, both were sentenced to death in the Second Circuit Court District of Mississippi. Evans says that district accounts for “the largest number of death sentences” of any of the State’s 22 districts since 1976. Pet. for Cert. in No. 17–7245, pp. 5–6; see also App. D to Pet. for Cert. (citing death sentencing data maintained by Mississippi’s Office of the State Public Defender).

This geographic concentration reflects a nationwide trend. Death sentences, while declining in number, have become increasingly concentrated in an ever-smaller number of counties. In the mid-1990’s, more than 300 people were sentenced to death in roughly 200 counties each year. B. Garrett, *End of Its Rope: How Killing the Death Penalty Can Revive Criminal Justice* 138–140 (2017). By comparison, these numbers have declined dramatically over the past three years. A recent study finds, for example, that in 2015, *all* of those who were sentenced to death nationwide (51 people in total) were sentenced in 38 of this Nation’s more than 3,000 counties; in 2016, *all* death sentences (31 in total) were imposed in just 28 counties nationwide (fewer than 1% of counties). *Id.*, at 139–140, Fig. 6.2; see also Garrett, Jakubow, & Desai, *The American Death Penalty Decline*, 107 J. Crim. L. & C. 561, 564, 584 (2017); Fair Punishment Project, *Too Broken To Fix: Part I: An In-Depth Look at America’s Outlier Death Penalty*

Counties 2 (2016) (citing data indicating there were 16 counties, or 0.5% of all counties nationwide, in which five or more death sentences were imposed from 2010 to 2015); cf. M. Radelet, *History of the Death Penalty in Colorado* 168 (2017) (explaining that Colorado's three death row inmates "[a]ll were prosecuted in the same judicial district, all the cases came from Aurora, all are young black men, and indeed all attended the same high school"); Joint State Government Commission, *Capital Punishment in Pennsylvania: Report of the Task Force and Advisory Committee* 90 (June 2018) ("[D]ifferences among counties in death penalty outcomes . . . were the largest and most prominent differences found in the study. In a very real sense, a given defendant's chance of having the death penalty sought, retracted, or imposed depends upon where that defendant is prosecuted and tried" (quotation altered)); *Glossip*, 576 U. S., at 918–920 (BREYER, J., dissenting).

This geographic arbitrariness is aggravated by the fact that definitions of death eligibility vary depending on the State. This Court has repeated that "[c]apital punishment must be limited to those offenders who commit a narrow category of the most serious crimes," *Roper v. Simmons*, 543 U. S. 551, 568 (2005) (internal quotation marks omitted), since "the culpability of the average murderer is insufficient to justify the most extreme sanction available to the State," *Atkins v. Virginia*, 536 U. S. 304, 319 (2002). But the statutory criteria States enact to distinguish a non-death-eligible murder from a particularly heinous death-eligible murder and thus attempt to use to identify the "worst of the worst" murderers are far from uniform. See Baumgartner, *supra*, at 90–115 (reviewing data collected in a "host" of empirical studies showing "that nearly *all* homicides in a given state are death-eligible").

For instance, as Evans argues, Mississippi is one of a small number of States in which defendants may be (and, in Mississippi's Second Circuit Court District, routinely are) sentenced to death for, among other things, felony robbery murder without any finding or proof of intent to kill. Pet. for Cert. in No. 17–7245, at 4–5, and nn. 3–4; see also *id.*, at 8, n. 10; Miss. Code Ann. §§ 97–3–19(2)(e), (f), 99–19–101(5)(d) (2017); McCord & Harmon, *Lethal Rejection: An Empirical Analysis of the Astonishing Plunge in Death Sentences in the United States From Their Post-Furman Peak*, 81 Albany L. Rev. 1, 32–33, and n. 155, Table 10 (2018)

(citing data indicating the general decline in robbery as an aggravating factor and research arguing that relying upon robbery as a sole aggravator is generally insufficient to identify the “worst of the worst”). And the Court recently considered a petition presenting “unrebutted” evidence that “about 98% of first-degree murder defendants in Arizona were eligible for the death penalty” under Arizona’s death penalty statute, which allows for imposition of the death penalty for “felony murder based on 22 possible predicate felony offenses . . . including, for example, transporting marijuana for sale.” *Hidalgo v. Arizona*, 583 U.S. 1196, 1198, 1201 (2018) (BREYER, J., statement respecting denial of certiorari).

I recognize that only a small fraction of the roughly 8,000 death sentences imposed since 1976 have resulted in executions. Executions continue to decline from the modern peak of 98 executions occurring across 72 counties and 20 States in 1999 to 28 executions in 22 counties across 6 States in 2015. Baumgartner, *supra*, at 328. In 2016, 20 people were executed. That number remains the fewest executions in more than a century, just below the 23 executions that took place in 2017. See Davis & Snell 8, 15. More than 700 people await execution on California’s death row but the State, which has executed 13 people since 1976, has not carried out an execution since 2006. *Id.*, at 3; DPIC, State by State Database: California, https://deathpenaltyinfo.org/state_by_state. The State of Mississippi, which has executed a total of 21 people since 1976, has not carried out an execution in more than six years. DPIC, State by State Database: Mississippi, https://deathpenaltyinfo.org/state_by_state. This data suggests that the death penalty may eventually disappear. But it also shows that capital punishment is “unusual” (as well as “cruel”).

III

Finally, I note that in the past three years, further evidence has accumulated suggesting that the death penalty as it is applied today lacks “requisite reliability.” *Glossip*, 576 U.S., at 910 (BREYER, J., dissenting). Four hours before Willie Manning was slated to die by lethal injection, the Mississippi Supreme Court stayed his execution and on April 21, 2015, he became the fourth person on Mississippi’s death row to be exonerated. *Id.*, at 927; National Registry of Exonerations (June 25, 2018), <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx>. Since January 2017, six death row inmates have been exonerated.

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See DPIC, Description of Innocence, <https://deathpenaltyinfo.org/innocence-cases#157>. Among them are Rodricus Crawford, Rickey Dale Newman, Gabriel Solache, and Vicente Benavides Figueroa, whose exonerations were based upon evidence of actual innocence. See National Registry of Exonerations, *supra*.

* * *

In my view, many of the capital cases that come before this Court, often in the form of petitions for certiorari, involve, like the cases of Richard Jordan and Timothy Evans, special problems of cruelty or arbitrariness. Hence, I remain of the view that the Court should grant the petitions now before us to consider whether the death penalty as currently administered violates the Constitution's Eighth Amendment.

JULY 16, 2018

Rehearing Denied

No. 16–9318. MALDONADO-LANDAUERDE *v.* UNITED STATES, 584 U. S. 977;

No. 17–656. AUDATEX NORTH AMERICA, INC. *v.* MITCHELL INTERNATIONAL, INC., 584 U. S. 961;

No. 17–1139. AAMES *v.* UNITED STATES ET AL., 584 U. S. 931;

No. 17–1192. TIRAT-GEFEN *v.* BATISTA ALMEIDA, 584 U. S. 962;

No. 17–1271. KANOFSKY *v.* COMMISSIONER OF INTERNAL REVENUE, 584 U. S. 950;

No. 17–1311. COULTER *v.* COULTER, 584 U. S. 993;

No. 17–1313. DEK–M NATIONWIDE, LTD. *v.* HILL ET AL., 584 U. S. 979;

No. 17–1315. COOPER *v.* COUNTRYWIDE HOME LOANS, INC., ET AL., 584 U. S. 993;

No. 17–1347. CASTILLO *v.* DORAL PARK COUNTRY CLUB VILLAS ET AL., 584 U. S. 979;

No. 17–7448. MARTINEZ-HERNANDEZ *v.* UNITED STATES, 583 U. S. 1137;

No. 17–7675. SORO *v.* KEYES CO., 584 U. S. 936;

No. 17–7738. COTTON *v.* COUNTY OF SAN BERNARDINO, CALIFORNIA, ET AL., 584 U. S. 937;

No. 17–7742. ONG VUE *v.* DOWLING, WARDEN, 584 U. S. 937;

No. 17–7746. MACKEY *v.* BERRYHILL, DEPUTY COMMISSIONER FOR OPERATIONS, SOCIAL SECURITY ADMINISTRATION, 584 U. S. 937;

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July 16, 30, 2018

- No. 17-7921. *WEIBLE v. CALIFORNIA*, 584 U. S. 939;
No. 17-7922. *WORTH v. NEW YORK*, 584 U. S. 965;
No. 17-7951. *AUSTIN v. JACKSONVILLE SHERIFF'S OFFICE*, 584 U. S. 965;
No. 17-7956. *TEDESCO v. PENNSYLVANIA*, 584 U. S. 965;
No. 17-8017. *ADAMSON v. GRIFFIN, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY*, 584 U. S. 982;
No. 17-8032. *STEELE v. THOMAS, WARDEN*, 584 U. S. 953;
No. 17-8036. *ALSTON v. CITY OF MADISON, WISCONSIN, ET AL.*, 584 U. S. 941;
No. 17-8042. *PEYTON v. BROWN ET AL.*, 584 U. S. 982;
No. 17-8069. *BUXTON v. HILL ET AL.*, 584 U. S. 982;
No. 17-8111. *KLUG v. ENGLISH, WARDEN, ET AL.*, 584 U. S. 944;
No. 17-8207. *TROY-MCKOY v. UNIVERSITY OF ILLINOIS ET AL.*, 584 U. S. 995;
No. 17-8218. *WASHINGTON v. DIAMOND*, 584 U. S. 966;
No. 17-8239. *BUXTON v. THOMPSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MERCER, ET AL.*, 584 U. S. 1005;
No. 17-8256. *CROMARTIE v. ALABAMA STATE UNIVERSITY ET AL.*, 584 U. S. 1005;
No. 17-8372. *CERNY ET AL. v. SECURITIES AND EXCHANGE COMMISSION*, 584 U. S. 985;
No. 17-8513. *VALDEZ PEREZ v. CALIFORNIA*, *ante*, p. 1007; and
No. 17-8559. *IN RE JONES*, 584 U. S. 975. Petitions for rehearing denied.

No. 16-9660. *LARIOS-VILLATORO v. UNITED STATES*; and *HERNANDEZ-HERNANDEZ v. UNITED STATES*, 584 U. S. 973. Petition for rehearing as to Jaime A. Hernandez-Hernandez denied.

JULY 30, 2018

Miscellaneous Order

No. 18A65. *UNITED STATES ET AL. v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON ET AL.* Application for stay, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. The Government's request for relief is premature and is denied without prejudice. The breadth of respondents' claims is striking, however, and justiciability of those claims presents substantial grounds for difference of opinion. The District Court should take these concerns into account in assessing

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burdens of discovery and trial, as well as desirability of a prompt ruling on the Government's pending dispositive motions.

AUGUST 1, 2018

Miscellaneous Order. (For Court's order making allotment of Justices, see *ante*, p. III.)

AUGUST 6, 2018

Certiorari Granted—Vacated and Remanded

No. 17–243. *ABDIRAHMAN v. UNITED STATES . . . BRIGGS v. UNITED STATES.* Petition for rehearing granted. The order entered June 28, 2018, [*ante*, p. 1030] denying petition for writ of certiorari vacated as to petitioner Michael Briggs. Certiorari as to Michael Briggs granted, judgment vacated, and case remanded for further consideration in light of *United States v. Mangahas*, 77 M. J. 220 (2018).

Miscellaneous Orders

No. 17A1425. *QORANE, AKA GAAS v. SESSIONS, ATTORNEY GENERAL.* Application for stay, presented to JUSTICE SOTOMAYOR and referred to the Court, denied.

No. 17–765. *UNITED STATES v. STITT.* C. A. 6th Cir.; and

No. 17–766. *UNITED STATES v. SIMS.* C. A. 8th Cir. [Certiorari granted, 584 U. S. 949.] Motion of petitioner to dispense with printing joint appendix granted.

Rehearing Granted. (See No. 17–243, *supra*.)

Rehearing Denied

No. 16–6777. *MORTON v. PERRY, SECRETARY, NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY*, 580 U. S. 1072;

No. 17–1336. *COULTER v. LINDSAY ET AL.*, 584 U. S. 1001;

No. 17–1407. *ROEDER v. SCHMIDT, ATTORNEY GENERAL OF KANSAS*, 584 U. S. 1032;

No. 17–1431. *GRACE ET AL. v. SECURITIES AND EXCHANGE COMMISSION*, 584 U. S. 994;

No. 17–1435. *O'LEARY v. OFFICE OF PERSONNEL MANAGEMENT ET AL.*, 584 U. S. 1014;

No. 17–1481. *GREEN v. MNUCHIN, SECRETARY OF THE TREASURY*, 584 U. S. 1033;

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August 6, 2018

- No. 17-6596. *MILLER v. UNITED STATES*, 584 U. S. 964;
No. 17-7328. *ISAACSON v. DAVIS*, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 583 U. S. 1185;
No. 17-7832. *DELGADO v. GODINEZ ET AL.*, 584 U. S. 952;
No. 17-7850. *PHILLIP v. MCARDLE*, 584 U. S. 964;
No. 17-7973. *ROOSEVELT W. ET AL. v. LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES*, 584 U. S. 966;
No. 17-7978. *LUCY v. GROW*, 584 U. S. 981;
No. 17-8072. *LIGGINS v. JPMORGAN CHASE BANK, N. A.*, 584 U. S. 982;
No. 17-8091. *NELSON v. AMALGAMATED TRANSIT UNION LOCAL 1181-1061, AFL-CIO, ET AL.*, 584 U. S. 983;
No. 17-8098. *KARABAJAKYAN v. BERRYHILL*, DEPUTY COMMISSIONER FOR OPERATIONS, SOCIAL SECURITY ADMINISTRATION, 584 U. S. 983;
No. 17-8208. *BURNETT v. BAC HOME LOANS SERVICING, LP, ET AL.*, 584 U. S. 1004;
No. 17-8225. *IN RE CHRISTIAN*, 584 U. S. 1000;
No. 17-8226. *ECHOLS v. CSX TRANSPORTATION, INC.*, 584 U. S. 955;
No. 17-8248. *CIOTTA v. HOLLAND, WARDEN*, 584 U. S. 1005;
No. 17-8257. *SIVAK v. IDAHO*, 584 U. S. 984;
No. 17-8262. *WOODSON v. UNITED STATES*, 584 U. S. 995;
No. 17-8263. *WOODSON v. UNITED STATES*, 584 U. S. 995;
No. 17-8264. *WOODSON v. UNITED STATES*, 584 U. S. 995;
No. 17-8265. *WOODSON v. UNITED STATES*, 584 U. S. 995;
No. 17-8266. *WOODSON v. UNITED STATES*, 584 U. S. 995;
No. 17-8267. *WOODSON v. UNITED STATES*, 584 U. S. 996;
No. 17-8268. *WOODSON v. UNITED STATES*, 584 U. S. 996;
No. 17-8269. *WOODSON v. UNITED STATES*, 584 U. S. 996;
No. 17-8276. *ALEXANDER v. WILLIAMS, WARDEN*, 584 U. S. 967;
No. 17-8290. *WRIGHT v. BAYVIEW LOAN SERVICING, LLC, ET AL.* (two judgments), 584 U. S. 1006;
No. 17-8422. *DONAHUE v. PENNSYLVANIA*, 584 U. S. 1035;
No. 17-8424. *ABELA v. WASHINGTON, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS*, 584 U. S. 1006;
No. 17-8425. *IN RE SEVION-EL*, 584 U. S. 958;
No. 17-8447. *COATES, AKA SIMMONS, AKA THOMAS v. SESSIONS, ATTORNEY GENERAL*, 584 U. S. 1036;

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- No. 17–8493. *VIOLA v. UNITED STATES*, 584 U. S. 997;
No. 17–8504. *CARPENTER v. CITY OF CHICAGO, ILLINOIS, ET AL.*, *ante*, p. 1007;
No. 17–8505. *BOZIC v. WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS*, 584 U. S. 1037;
No. 17–8517. *OKHIO v. UNITED STATES*, 584 U. S. 988;
No. 17–8723. *DUCKETT v. MARSH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT BENNER TOWNSHIP, ET AL.*, 584 U. S. 1018;
No. 17–8754. *JACKSON v. ALABAMA BOARD OF PARDON AND PAROLES*, 584 U. S. 1038; and
No. 17–8890. *PHILLIPS v. TRUMP, PRESIDENT OF THE UNITED STATES*, *ante*, p. 1008. Petitions for rehearing denied.
- No. 16–763. *KE KAILANI DEVELOPMENT LLC ET AL. v. KE KAILANI PARTNERS, LLC, ET AL.*, 580 U. S. 1117. Motion for leave to file petition for rehearing denied.
- No. 17–8334. *CHON v. UNITED STATES ET AL.*, 584 U. S. 1010. Petition for rehearing denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition.

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Miscellaneous Orders

No. 18A142. *IRICK v. TENNESSEE*. Application for stay of execution of sentence of death, presented to JUSTICE KAGAN, and by her referred to the Court, denied.

JUSTICE SOTOMAYOR, dissenting.

Tonight the State of Tennessee intends to execute Billy Ray Irick using a procedure that he contends will amount to excruciating torture. During a recent 10-day trial in the state court, medical experts explained in painstaking detail how the three-drug cocktail Tennessee plans to inject into Irick’s veins will cause him to experience sensations of drowning, suffocating, and being burned alive from the inside out. *Abdur’Rahman v. Parker*, No. 18–183–II(III) (Ch. Ct. Davidson Cty., Tenn., July 26, 2018), p. 21, and n. 7 (generally crediting the testimony of plaintiffs’ experts); Application for Stay of Execution 8–11 (summarizing that testimony); see also *Arthur v. Dunn*, 580 U. S. 1141, 1142 (2017) (SOTOMAYOR, J., dissenting from denial of certiorari). The entire process will last at least 10 minutes, and perhaps as many as 18,

before the third drug (potassium chloride) finally induces fatal cardiac arrest. No. 18–183–II(III), at 25–26. Meanwhile, as a result of the second drug (vecuronium bromide), Irick will be “entirely paralyzed, unable to move or scream.” *Arthur*, 580 U. S., at 1142 (opinion of SOTOMAYOR, J.).

But Irick may well be aware of what is happening to him. In theory, the first drug in the three-drug protocol, midazolam, is supposed to render a person unable to feel pain during an execution. But the medical experts who testified here explained that midazolam would not work, and the trial court credited that testimony. Application for Stay of Execution 8–11; No. 18–183–II(III), at 21; see also *Arthur*, 580 U. S., at 1145–1146 (opinion of SOTOMAYOR, J.) (describing similar evidence in that case). If the drug indeed fails, the consequences for Irick will be extreme: Although the midazolam may temporarily render Irick unconscious, the onset of pain and suffocation will rouse him. And it may do so just as the paralysis sets in, too late for him to alert bystanders that his execution has gone horribly (if predictably) wrong.

The State does not appear to have rebutted meaningfully any of this evidence.¹ See No. 18–183–II(III), at 21, n. 7 (“The Defendants’

¹ I say “appear,” and give only a general description of the evidence apparently introduced at trial, because in the rushed context of this emergency application, the trial record is not before this Court. I therefore rely on the state courts’ orders and the parties’ filings to discern what that record is likely to show.

The application comes to this Court in a hurried posture because Tennessee first adopted its current midazolam-based protocol only in January of this year. No. M1987–00131–SC–DPE–DD (Tenn., Aug. 6, 2018), p. 2. Irick, along with 32 co-plaintiffs also under sentence of death, promptly challenged it. *Ibid.* With Irick’s August 9 execution date looming, the parties and the court brought this complex case to trial in a matter of months. See *ibid.* The trial court issued its decision on July 26, Irick filed a notice of appeal and moved to vacate his execution date on July 30, and a divided Supreme Court of Tennessee denied Irick’s motion August 6. *Id.*, at 3, 6. In the meantime, the Tennessee Court of Appeals issued an order advising that it would not have sufficient time to consider the issues raised by Irick’s appeal before his scheduled execution. *Abdur’Rahman v. Parker*, No. M2018–01385–COA–R3–CV (July 30, 2018). Given the precipitous pace of proceedings, the Tennessee Supreme Court rendered its decision on Irick’s motion to vacate without the benefit of the pleadings, trial transcripts, or exhibits on which the trial court relied in reaching its decision. No. M1987–00131–SC–DPE–DD, at 4 (Lee, J., dissenting).

two experts, while qualified, did not have the research knowledge and [e]minent publications that Plaintiffs' experts did"). As noted above, the trial court credited the evidence put on by Irick and his coplaintiffs, finding that they "established that midazolam does not elicit strong analgesic [*i. e.*, pain-inhibiting] effects," and that therefore Irick "may be able to feel pain from the administration of the second and third drugs." *Id.*, at 21. Those are the drugs that will paralyze him and create sensations of suffocation and of burning that "'may well be the chemical equivalent of being burned at the stake'" before eventually stopping his heart. *Arthur*, 580 U. S., at 1142 (opinion of SOTOMAYOR, J.) (quoting *Glossip v. Gross*, 576 U. S. 863, 949 (2015) (SOTOMAYOR, J., dissenting)). Accounts from other executions carried out using midazolam lend troubling credence to the trial court's finding. See No. 18–183–II(III), at 28 (noting testimony describing inmates' "grimaces, clenched fists, furrowed brows, and moans" during lethal injection executions, including by use of midazolam); *Glossip*, 576 U. S., at 966–968 (SOTOMAYOR, J., dissenting).

Given the Eighth Amendment's prohibition on "cruel and unusual punishments," one might think that such a finding would resolve this case in Irick's favor. And to stay or delay Irick's execution, the Tennessee Supreme Court needed only to conclude that it is likely (not certain) that Irick can persuade an appellate court that his claim has merit. See Tenn. Sup. Ct. Rule 12(4)(E) (2017); No. M1987–00131–SC–DPE–DD (Tenn., Aug. 6, 2018), p. 3.

But the Tennessee Supreme Court did not find any such likelihood and declined to postpone Irick's execution to allow appellate review of his claims. *Id.*, at 3–5. The court instead effectively let stand the trial court's order, which held that Irick's extensive and persuasive evidence describing the ordeal that awaits him raised no constitutional concerns. The trial court offered two independent reasons for its holding: first, that Irick had not proved that another, less painful method of killing him was available to the State; and second, even assuming Irick had proved a readily available alternative, that this Court would not consider the painful ordeal that Irick faces sufficiently torturous to violate the Eighth Amendment. No. 18–183–II(III), at 9, 21–22. Thereafter, the Tennessee Supreme Court refused to postpone Irick's execution on the ground that he was unlikely to succeed in disturbing the trial court's no-available-alternative holding on appeal. No. M1987–00131–SC–DPE–DD, at 4. The court did not directly

address the trial court's second rationale, but implied that it agreed. See *id.*, at 5.

In *Glossip v. Gross*, 576 U.S. 863, this Court did impose the “perverse requirement that inmates offer alternative methods for their own executions.” *McGehee v. Hutchinson*, 581 U.S. 933, 935 (2017) (SOTOMAYOR, J., dissenting from denial of application for stay and denial of certiorari). Without the trial court record before me, I cannot say definitively that the Tennessee courts are wrong that Irick failed to carry that burden. But Irick's contentions raise serious questions about the courts' conclusion.

Irick raised two different alternative methods in the trial court: a single-drug procedure using only a drug called pentobarbital or, alternatively, a modification of the current procedure to omit the administration of vecuronium bromide as a paralytic at its second step. Tennessee argued, and the trial court found, that pentobarbital was currently unavailable to the State notwithstanding its efforts to find a supplier. No. 18–183–II(III), at 9–19. Irick claims, however, that the court improperly ignored indirect evidence proving pentobarbital's availability. If that contention is accurate, then that could constitute legal error. Further, Irick maintains the trial court improperly refused to permit him to amend the pleadings to argue that simply omitting the paralytic drug would be a suitable alternative, see No. M1987–00131–SC–DPE–DD, at 4–5, even though it appears such an amendment might not have necessitated any additional testimony, see No. M1987–00131–SC–DPE–DD, at 5–6 (Lee, J., dissenting).² The record would shed light on the validity of Irick's contentions.

If Irick did fail to plead and prove at least one available alternative, this case further illustrates the error of this Court's “macabre challenge” to condemned prisoners that they must propose an alternative method for their own executions. *Arthur*, 580 U.S., at 1141 (opinion of SOTOMAYOR, J.). But given the life-or-death stakes of determining whether the trial court erred in concluding that Irick failed to prove an alternative means of execution, and because Irick makes a nonfrivolous contention that the trial court did so err, see No. M1987–00131–SC–DPE–DD, at 4–6 (Lee, J.,

² Irick contends that his evidence shows that omitting the paralytic would hasten his death and shorten his suffering. Application for Stay of Execution 12, 16.

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dissenting), I would grant the stay to allow the state courts more time to consider Irick’s claims. See *Barefoot v. Estelle*, 463 U. S. 880, 895 (1983).

As to the prediction that this Court would deem up to 18 minutes of needless torture anything less than cruel, unusual, and unconstitutional, I fervently hope the state courts were mistaken. At a minimum, their conclusion that the Constitution tolerates what the State plans to do to Irick is not compelled by *Glossip*, which did not categorically determine whether a lethal injection protocol using midazolam is a constitutional method of execution. See *Arthur*, 580 U. S., at 1150 (opinion of SOTOMAYOR, J.). *Glossip*’s majority concluded only that, based on the evidence presented in that case, there was no clear error in the District Court’s factual finding that midazolam was highly likely to prevent a person from feeling pain. 580 U. S., at 1150 (opinion of SOTOMAYOR, J.) (citing *Glossip*, 576 U. S., at 881). As noted, the trial court here came to a different factual conclusion based on a different factual record, as have others. See *McGehee*, 581 U. S., at 935 (opinion of SOTOMAYOR, J.) (noting a District Court’s “well-supported finding that midazolam creates a substantial risk of severe pain”); *Otte v. Morgan*, 582 U. S. 955, 956 (2017) (SOTOMAYOR, J., dissenting from denial of application for stay and denial of certiorari) (similar).

If it turns out upon more sober appellate review that this case presents the question, I would grant certiorari to decide the important question whether the Constitution truly tolerates executions carried out by such quite possibly torturous means.

* * *

In refusing to grant Irick a stay, the Court today turns a blind eye to a proven likelihood that the State of Tennessee is on the verge of inflicting several minutes of torturous pain on an inmate in its custody, while shrouding his suffering behind a veneer of paralysis. I cannot in good conscience join in this “rush to execute” without first seeking every assurance that our precedent permits such a result. No. M1987–00131–SC–DPE–DD, at 1 (Lee, J., dissenting). If the law permits this execution to go forward in spite of the horrific final minutes that Irick may well experience, then we have stopped being a civilized nation and accepted barbarism. I dissent.

No. 142, Orig. FLORIDA *v.* GEORGIA. Ralph I. Lancaster, Esq., of Portland, Me., the Special Master in the case, is hereby dis-

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charged with the thanks of the Court. It is ordered that the Honorable Paul J. Kelly, Jr., of Santa Fe, N. M., is appointed Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings, to direct subsequent proceedings, to summon witnesses, to issue subpoenas, and to take such evidence as may be introduced and such as he may deem it necessary to call for. The Special Master is directed to submit reports as he may deem appropriate. The cost of printing his reports, and all other proper expenses, including travel expenses, shall be submitted to the Court.* [For earlier decision herein, see, *e. g.*, *ante*, p. 803.]

No. 18–5495 (18A145). *IN RE IRICK*. Application for stay of execution of sentence of death, presented to JUSTICE KAGAN, and by her referred to the Court, denied. Petition for writ of habeas corpus denied.

AUGUST 17, 2018

Dismissal Under Rule 46

No. 17–804. *EVE–USA, INC., ET AL. v. MENTOR GRAPHICS CORP.* C. A. Fed. Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 851 F. 3d 1275.

AUGUST 24, 2018

Miscellaneous Orders

No. 18A16. *CHASSON, AKA ALIAS, AKA HASON v. SESSIONS, ATTORNEY GENERAL*. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. 17–71. *WEYERHAEUSER Co. v. UNITED STATES FISH AND WILDLIFE SERVICE ET AL.* C. A. 5th Cir. [Certiorari granted, 583 U.S. 1101.] Motion of respondents Markle Interests, LLC, et al. for divided argument denied.

No. 17–571. *FOURTH ESTATE PUBLIC BENEFIT CORP. v. WALL-STREET.COM, LLC, ET AL.* C. A. 11th Cir. [Certiorari granted, *ante*, p. 1029.] Motion of petitioner to dispense with printing joint appendix granted.

No. 17–587. *MOUNT LEMMON FIRE DISTRICT v. GUIDO ET AL.* C. A. 9th Cir. [Certiorari granted, 583 U.S. 1155.] Motion of

*[REPORTER'S NOTE: For amendment of this order, see *post*, p. 1057.]

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the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 17–1026. *GARZA v. IDAHO*. Sup. Ct. Idaho. [Certiorari granted, *ante*, p. 1002.] Motion of petitioner to dispense with printing joint appendix granted.

No. 17–1091. *TIMBS v. INDIANA*. Sup. Ct. Ind. [Certiorari granted, *ante*, p. 1002.] Motion of petitioner to dispense with printing joint appendix granted.

No. 17–1299. *FRANCHISE TAX BOARD OF CALIFORNIA v. HYATT*. Sup. Ct. Nev. [Certiorari granted, *ante*, p. 1029.] Motion of petitioner to dispense with printing joint appendix granted.

Rehearing Denied

No. 16–6308. *GRAHAM v. UNITED STATES*, *ante*, p. 1029;

No. 16–6694. *JORDAN v. UNITED STATES*, *ante*, p. 1035;

No. 17–565. *ROWAN COUNTY, NORTH CAROLINA v. LUND ET AL.*, *ante*, p. 1035;

No. 17–970. *STANFORD v. BROWNE ET AL.*, *ante*, p. 1003;

No. 17–1467. *GEDDES ET AL. v. PEOPLE’S COUNSEL OF BALTIMORE COUNTY ET AL.*, *ante*, p. 1018;

No. 17–1488. *TIMBES v. DEUTSCHE BANK NATIONAL TRUST CO. ET AL.*, *ante*, p. 1018;

No. 17–1489. *BRADDOCK v. JOLIE ET AL.*, *ante*, p. 1018;

No. 17–1495. *ROBERTS v. FNB SOUTH OF ALMA, GEORGIA*, *ante*, p. 1005;

No. 17–1527. *CRAMPTON v. COMMISSION FOR LAWYER DISCIPLINE OF THE STATE BAR OF TEXAS*, *ante*, p. 1005;

No. 17–7136. *THOMAS v. PERRY, WARDEN*, 583 U. S. 1130;

No. 17–7220. *BORMUTH v. JACKSON COUNTY, MICHIGAN*, *ante*, p. 1033;

No. 17–7664. *WILLIAMS v. FLORIDA DEPARTMENT OF CORRECTIONS ET AL.*, 584 U. S. 936;

No. 17–7769. *GRAY v. UNITED STATES*, *ante*, p. 1033;

No. 17–7884. *BADMUS v. MUTUAL OF OMAHA INSURANCE CO.*, 584 U. S. 1004;

No. 17–7889. *DAVIS, AKA STRONG v. PENNSYLVANIA*, 584 U. S. 939;

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No. 17-7891. BLUEFELD *v.* COHEN ET AL., 584 U.S. 965;
No. 17-8000. BETHUNE *v.* METROPOLITAN TRANSPORTATION
AUTHORITY/LONG ISLAND BUS ET AL., 584 U.S. 981;
No. 17-8081. PETTAWAY *v.* TEACHERS INSURANCE AND ANNU-
ITY ASSOCIATION OF AMERICA ET AL., 584 U.S. 982;
No. 17-8273. BROWER *v.* MICHIGAN, 584 U.S. 1005;
No. 17-8350. MOHAJER *v.* JPMORGAN CHASE BANK, N. A.,
ET AL., 584 U.S. 1016;
No. 17-8469. IN RE RAA, *ante*, p. 1002;
No. 17-8548. CHILDRESS *v.* CITY OF CHARLESTON POLICE DE-
PARTMENT ET AL., *ante*, p. 1007;
No. 17-8575. LINEHAN *v.* PIPER, *ante*, p. 1020;
No. 17-8591. COAD *v.* UNITED STATES, 584 U.S. 1007;
No. 17-8609. MANUEL LOPEZ *v.* CITY OF SANTA ANA, CALI-
FORNIA, ET AL., *ante*, p. 1021;
No. 17-8698. CHUN HEI LAM *v.* UNITED STATES, 584 U.S.
1009;
No. 17-8702. BRADLEY *v.* WISCONSIN DEPARTMENT OF CHIL-
DREN AND FAMILIES ET AL., *ante*, p. 1022;
No. 17-8757. LEONARD *v.* OREGON ET AL., *ante*, p. 1008;
No. 17-8811. IN RE MASON, *ante*, p. 1015;
No. 17-8848. IN RE SMOTHERMAN, 584 U.S. 1031; and
No. 17-8946. MALDONADO *v.* UNITED STATES, *ante*, p. 1009.
Petitions for rehearing denied.

AUGUST 29, 2018

Miscellaneous Order

No. 18A146. FOOD MARKETING INSTITUTE *v.* ARGUS LEADER
MEDIA, DBA ARGUS LEADER. Application to recall and stay the
mandate, presented to JUSTICE GORSUCH, and by him referred to
the Court, granted, and the mandate of the United States Court
of Appeals for the Eighth Circuit in case No. 17-1346 is recalled
and stayed pending the timely filing and disposition of a petition
for writ of certiorari. Should the petition for writ of certiorari
be denied, this stay shall terminate automatically. In the event
the petition for writ of certiorari is granted, the stay shall termi-
nate upon the sending down of the judgment of this Court. Jus-
TICE GINSBURG, JUSTICE SOTOMAYOR, and JUSTICE KAGAN would
deny the application.

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AUGUST 30, 2018

Miscellaneous Order

No. 18A118. FULTON ET AL. *v.* CITY OF PHILADELPHIA, PENNSYLVANIA, ET AL. Application for injunctive relief, presented to JUSTICE ALITO, and by him referred to the Court, denied. JUSTICE THOMAS, JUSTICE ALITO, and JUSTICE GORSUCH would grant the application.

SEPTEMBER 4, 2018

Dismissal Under Rule 46

No. 17–8654. ALMIGHTY SUPREME BORN ALLAH *v.* MILLING ET AL. C. A. 2d Cir. Certiorari dismissed under this Court’s Rule 46. Reported below: 876 F. 3d 48.

SEPTEMBER 7, 2018

Miscellaneous Order

No. 18A240. MICHIGAN STATE A. PHILIP RANDOLPH INSTITUTE ET AL. *v.* JOHNSON, MICHIGAN SECRETARY OF STATE. C. A. 6th Cir. Application to vacate stay, presented to JUSTICE KAGAN, and by her referred to the Court, denied. JUSTICE GINSBURG and JUSTICE SOTOMAYOR would grant the application.

SEPTEMBER 18, 2018

Miscellaneous Order

No. 18A274. CROSSROADS GRASSROOTS POLICY STRATEGIES *v.* CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON ET AL. D. C. D. C. Application for stay, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. The order heretofore entered by THE CHIEF JUSTICE is vacated.

SEPTEMBER 20, 2018

Dismissal Under Rule 46

No. 17–667. PIONEER CENTRES HOLDING COMPANY STOCK OWNERSHIP PLAN AND TRUST ET AL. *v.* ALERUS FINANCIAL, N. A. C. A. 10th Cir. Certiorari dismissed under this Court’s Rule 46.1. Reported below: 858 F. 3d 1324.

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SEPTEMBER 24, 2018

Miscellaneous Orders

No. 17–647. KNICK *v.* TOWNSHIP OF SCOTT, PENNSYLVANIA, ET AL. C. A. 3d Cir. [Certiorari granted, 583 U. S. 1166.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 17–765. UNITED STATES *v.* STITT. C. A. 6th Cir.; and

No. 17–766. UNITED STATES *v.* SIMS. C. A. 8th Cir. [Certiorari granted, 584 U. S. 949.] Joint motion of respondents for divided argument denied. Motion of respondent Jason D. Sims for appointment of counsel granted, and Jeffrey L. Fisher, of Stanford, Cal., is appointed to serve as counsel for respondent Jason D. Sims in No. 17–766.

SEPTEMBER 25, 2018

Miscellaneous Order

No. 142, Orig. FLORIDA *v.* GEORGIA. The August 9, 2018, order in this case is amended to provide that the compensation of a legal assistant for the Special Master shall be charged against and borne by the parties in such proportion as the Court may hereafter direct. The cost of printing the Special Master's reports, and all other proper expenses, including travel expenses, shall be submitted to the Court. [For earlier order herein, see, *e. g., ante*, p. 1052.]

SEPTEMBER 27, 2018

Miscellaneous Order

No. 18–6086 (18A311). IN RE ACKER. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Granted

No. 17–1201. THACKER ET UX. *v.* TENNESSEE VALLEY AUTHORITY. C. A. 11th Cir. Certiorari granted.* Reported below: 868 F. 3d 979.

*[REPORTER'S NOTE: For amendment of this order, see, *post*, p. 1058.]

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No. 18–96. TENNESSEE WINE AND SPIRITS RETAILERS ASSN. *v.* BYRD, EXECUTIVE DIRECTOR OF THE TENNESSEE ALCOHOLIC BEVERAGE COMMISSION, ET AL. C. A. 6th Cir. Certiorari granted. Reported below: 883 F. 3d 608.

No. 17–1471. HOME DEPOT U.S.A., INC. *v.* JACKSON. C. A. 4th Cir. Certiorari granted. In addition to the questions presented by the petition, the parties are directed to brief and argue the following question: “Should this Court’s holding in *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100 (1941)—that an original plaintiff may not remove a counterclaim against it—extend to third-party counterclaim defendants?” Reported below: 880 F. 3d 165.

No. 17–1484. AZAR, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* ALLINA HEALTH SERVICES ET AL. C. A. D. C. Cir. Certiorari granted limited to the following question: “Whether 42 U.S.C. § 1395hh(a)(2) or § 1395hh(a)(4) required the Department of Health and Human Services to conduct notice-and-comment rulemaking before providing the challenged instructions to a Medicare Administrator Contractor making initial determinations of payments due under Medicare.” Reported below: 863 F. 3d 937.

No. 17–1625. RIMINI STREET, INC., ET AL. *v.* ORACLE USA, INC., ET AL. C. A. 9th Cir. Certiorari granted. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 879 F. 3d 948.

Certiorari Denied

No. 18–6075 (18A310). ACKER *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied. Certiorari denied.

SEPTEMBER 28, 2018

Miscellaneous Order

No. 17–1201. THACKER ET UX. *v.* TENNESSEE VALLEY AUTHORITY. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1057.] Order granting petition for writ of certiorari amended as follows: Certiorari granted limited to Question 1 presented by the petition.