

(ORDER LIST: 586 U.S.)

TUESDAY, OCTOBER 9, 2018\*

**CERTIORARI -- SUMMARY DISPOSITIONS**

17-1428 NIANG, NDIIBA, ET AL. V. TOMBLINSON, BRITTANY, ET AL.

The petition for a writ of certiorari is granted. The judgment of the United States Court of Appeals for the Eighth Circuit is vacated, and the case is remanded to that court with instructions to direct the District Court to dismiss the case as moot. See *United States v. Munsingwear, Inc.*, 340 U. S. 36 (1950).

17-8381 FRAZIER, WILLIAM V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Sixth Circuit for further consideration in light of *Sessions v. Dimaya*, 584 U. S. \_\_\_\_ (2018).

**ORDERS IN PENDING CASES**

18M39 STRONG, JOEL D. V. BURT, WARDEN

18M40 PFEFFER, ALBA T. V. WELLS FARGO ADVISORS, ET AL.

18M41 WILLIAMS, ANTYWANE E. V. COX, JUDGE, ET AL.

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

\* Justice Kavanaugh took no part in the consideration or decision of the motions or petitions appearing on this Order List.

18M42 LASCHKEWITSCH, JOHN V. AMERICAN NATIONAL LIFE INSURANCE

18M43 WAIRI, JOSH A. V. UNITED STATES

18M44 JOHNSON, DION D. V. UNITED STATES

The motions for leave to file petitions for writs of certiorari with the supplemental appendices under seal are granted.

18M45 ADAMS, RAYMOND E. V. UNITED STATES

18M46 MOSS, JUSTIN A. V. POLLARD, WARDEN

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

18M47 RUIZ, RANDAL V. DIAZ, ACTING SEC., CA DOC

The motion to direct the Clerk to file a petition for a writ of certiorari out of time under Rule 14.5 is denied.

18M48 KILPATRICK, GREGORY D. V. KAMKAR, SAHAR

18M49 SYLINCE, PHARES V. FLORIDA

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

16-1094 SUDAN V. HARRISON, RICK, ET AL.

16-1498 WA DEPT. OF LICENSING V. COUGAR DEN, INC.

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

17-419 DAWSON, JAMES, ET UX. V. STEAGER, WV STATE TAX COMM'R

The motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted.

17-949 STURGEON, JOHN V. FROST, BERT, ET AL.

The motion of Alaska for leave to participate in oral argument as *amicus curiae* and for divided argument is granted.

17-1026 GARZA, GILBERTO V. IDAHO

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

17-1107 CARPENTER, INTERIM WARDEN V. MURPHY, PATRICK D.

The motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted. Justice Gorsuch took no part in the consideration or decision of this motion.

17-1174 NIEVES, LUIS A., ET AL. V. BARTLETT, RUSSELL P.

The motion of respondent to file volume II of the joint appendix under seal is granted.

17-1229 HELSINN HEALTHCARE V. TEVA PHARMACEUTICALS

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

18-164 FIRST SOLAR, INC., ET AL. V. MINEWORKERS' PENSION, ET AL.

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

18-351 PENSACOLA, FL, ET AL. V. KONDRAT'YEV, AMANDA, ET AL.

The motion of petitioners to expedite consideration of the petition for a writ of certiorari is denied.

18-5401 POIRIER, MELISSA J. V. MA DOC

18-5567 CURRY, CARLINE V. MANSFIELD, OH, ET AL.

18-5568 CURRY, CARLINE V. MANSFIELD, OH, ET AL.

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until October 30, 2018, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

**CERTIORARI DENIED**

17-1318 KINDRED NURSING CENTERS, ET AL. V. WELLNER, BEVERLY  
17-1463 SEGOVIA, LUIS, ET AL. V. UNITED STATES, ET AL.  
17-1483 ALEXSAM, INC. V. WILDCARD SYSTEMS, INC., ET AL.  
17-1499 RP HEALTHCARE, INC., ET AL. V. RANBAXY PHARMACEUTICALS, ET AL.  
17-1510 VEAL, ROBERT V. GEORGIA  
17-1559 VILLEGAS-SARABIA, LEONARDO V. SESSIONS, ATT'Y GEN.  
17-1566 LACAZE, ROGERS V. LOUISIANA  
17-1607 FAIRLEY, KENNETH E. V. UNITED STATES  
17-1610 JONES, CLIFFORD W. V. DEPT. OF H&HS  
17-1611 HILLSMAN, ROBERT G. V. ESCOTO, MARK J.  
17-1699 MR. P., ET UX. V. WEST HARTFORD BOARD OF EDUCATION  
17-1703 ) HONEYWELL INTERNATIONAL, ET AL. V. MEXICHEM FLUOR INC., ET AL.  
    ) )  
18-2 ) NATURAL RESOURCES DEFENSE V. MEXICHEM FLUOR, INC., ET AL.  
17-8382 GLOVER, ERNEST M., ET AL. V. UNITED STATES  
17-8558 LONG, GILLMAN R. V. UNITED STATES  
17-8801 DEL MONTE, AMILKA V. UNITED STATES  
17-9000 ACOSTA, GABRIEL A. V. RAEMISCH, EXEC. DIR., CO DOC  
17-9130 POTENCIANO, GRACIELA V. UNITED STATES  
17-9159 WARD, BRUCE E. V. ARKANSAS  
17-9549 ZACK, MICHAEL D. V. JONES, SEC., FL DOC, ET AL.  
18-108 DUNCAN, DAVID V. GEICO GENERAL INSURANCE CO.

18-115 WYNN, KIMOTHY M. V. WASHINGTON

18-116 REARDON, JOHN E. V. ZONIES, DANIEL B., ET AL.

18-118 SCHWARTZ, JEFF, ET UX. V. JPMORGAN CHASE BANK, ET AL.

18-128 ABOUELMAGD, MOHAMED V. NEWELL, DEBRA

18-129 W. S. V. S. T., ET UX.

18-132 ELMHIRST, JAMIE V. McLAREN NORTHERN MI, ET AL.

18-136 DREYER, CATHERINE R. V. COUNTY COURT OF TX, COLEMAN CTY.

18-142 BARONI, ALLANA V. BANK OF NEW YORK MELLON

18-147 SCOTT, KAREN H. V. DISTRICT HOSPITAL PARTNERS, L.P.

18-148 LOTHIAN CASSIDY, LLC, ET AL. V. LOTHIAN EXPLORATION, ET AL.

18-151 PETIT-CLAIR, ALFRED J., ET AL. V. GREWAL, ATT'Y GEN. OF NJ, ET AL.

18-152 GARMONG, GREGORY V. SUPREME COURT OF NV, ET AL.

18-156 BRADY, JAMES H. V. GOLDMAN, JOHN, ET AL.

18-157 BRADY, JAMES H. V. UNDERWOOD, ATT'Y GEN. OF NY

18-158 GEBHARDT, RICHARD V. NIELSEN, SEC. OF HOMELAND

18-166 PROBANDT, JOHN M., ET AL. V. WALKER, DENNIS P.

18-169 LABER, LANCE V. MILBERG LLP, ET AL.

18-171 SNYDER, ROBERT R. V. CA DOC, ET AL.

18-172 HERNANDEZ, ALFONSO A. V. SESSIONS, ATT'Y GEN.

18-173 SUN, XIU J. V. ZEVE, OREN L.

18-183 ADVANCED AUDIO DEVICES, LLC V. HTC CORPORATION, ET AL.

18-184 AYANBADEJO, JOHN V. SIEGL, MARK, ET AL.

18-197 WADE, E. K. V. ACOSTA, SEC. OF LABOR, ET AL.

18-207 DUGGAN, GEORGE V. DEPT. OF DEFENSE

18-211 HURD, STEVEN M. V. CALIFORNIA

18-237 ) THOMAS, GARY, ET AL. V. UNITED STATES

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18-240 ) TANG YUK, KIRK V. UNITED STATES

18-249 CONNOR, MADELEINE V. CASTRO, ERIC, ET AL.  
18-250 CHEN, TU Y. V. SUFFOLK COUNTY COLLEGE, ET AL.  
18-253 FELIX, MICHAEL V. NEW YORK  
18-256 BARTLETT, ROBERT, ET AL. V. HONEYWELL INTERNATIONAL, INC.  
18-270 PHILLIPS, DAMIAN V. UNITED STATES  
18-291 JAISINGHANI, GUL V. SHARMA, ANIL, ET AL.  
18-312 SMITH, DAVID V. TENNESSEE NATIONAL GUARD  
18-5036 MARTINEZ, JEROME A. V. UNITED STATES  
18-5038 SWEENEY, NEIL V. UNITED STATES  
18-5039 ROWLAND, GUY K. V. CHAPPELL, WARDEN  
18-5164 BROOKS, GEORGE A. V. UNITED STATES  
18-5217 PEREZ, AUDY V. UNITED STATES  
18-5285 SINGH, DANAVAN V. SESSIONS, ATT'Y GEN.  
18-5352 BROWN, PAUL A. V. FLORIDA  
18-5359 SUGGS, ERNEST D. V. FLORIDA  
18-5376 GERALDS, MARK A. V. FLORIDA  
18-5387 SMITH, JOHN G. V. WASHINGTON  
18-5395 MEZZLES, WAYNE C. V. KATAVICH, WARDEN  
18-5402 POPE, THOMAS D. V. FLORIDA  
18-5403 DENNIS, LEROY D. V. OKLAHOMA  
18-5410 PODARAS, CHARLES V. MENLO PARK, CA, ET AL.  
18-5411 MEHMETI, SUBI V. JOFAZ TRANSPORTATION INC.  
18-5412 JOHNSON, ROBERT E. V. VIRGINIA  
18-5413 LEWIS, CLARENCE D. V. HEDGEMON, JOHNNY, ET AL.  
18-5415 GASKIN, LOUIS B. V. FLORIDA  
18-5420 HEAGY, TYLER T. V. PENNSYLVANIA  
18-5424 SAKUMA, PATSY N. V. APARTMENT OWNERS, ET AL.

18-5425 RAMIREZ, JOSE J. V. APONTE, JOSEPH, ET AL.  
18-5429 GARRY, MICHAEL V. TRANE CO.  
18-5432 SANKARA, AHMADOU V. O'HARA, LIAM, ET AL.  
18-5434 VICTORINO, TROY V. FLORIDA  
18-5437 WHITTON, GARY R. V. FLORIDA  
18-5440 LOMAX, LARENZO V. VANNOY, WARDEN  
18-5441 BYRD, MILFORD W. V. FLORIDA  
18-5442 WALL, CRAIG A. V. FLORIDA  
18-5443 DeGRATE, ANTOINE D. V. DAVIS, DIR., TX DCJ  
18-5446 STORY, ALLAN L. V. DAVIS, DIR. TX DCJ  
18-5447 ROCK, DAVID V. V. BRACY, WARDEN  
18-5448 PACKENHAM STANLEY, ELLEN E. V. BERRYHILL, NANCY A.  
18-5450 RIVAS-RIVERA, AMILCAR V. PENNSYLVANIA  
18-5451 STEELE, CHARLES M. V. JENKINS, WARDEN, ET AL.  
18-5453 ELLIOTT, MARK V. PALMER, WARDEN  
18-5457 KENNEDY, MICHAEL A. V. TEXAS  
18-5459 WARNELL, ZACHARY D. V. TEXAS  
18-5460 HILL, DAVID V. REINKE, BRENT, ET AL.  
18-5463 KENNEDY, MICHAEL V. DAVIS, DIR., TX DCJ  
18-5465 DREYFUSE, JESSE V. JUSTICE, GOV. OF WV  
18-5476 ISMAIYL, ABDUL H. V. BROWN, FATIMAH D., ET AL.  
18-5477 EBRON, THOMAS V. BROWN, KAREN D.  
18-5478 JENNINGS, RYAN V. DEUTSCHE BANK, ET AL.  
18-5479 JACKSON, TADAREOUS V. DAVIS, DIR., TX DCJ  
18-5481 WATSON, JOHN K. V. VIRGINIA  
18-5485 WASHINGTON, WILLIAM N. V. ARNOLD, WARDEN  
18-5486 QUINTANA, CELESTINO V. HANSEN, MATTHEW, ET AL.

18-5489 KWON, MIN H. V. WON, HYOUN P., ET AL.

18-5491 LOVIN, GLEN H. V. ALLBAUGH, DIR., OK DOC

18-5493 GANT, MACEO V. WINN, WARDEN

18-5494 MILAM, BLAINE K. V. DAVIS, DIR., TX DCJ

18-5496 PEREZ, ALFREDO V. CALIFORNIA

18-5498 CURTIS, WILLIE BEASLEY V. MICHIGAN

18-5499 SANCHEZ, HILARIO V. DAVIS, DIR., TX DCJ

18-5501 JONES, DONALD V. BANK OF AMERICA, ET AL.

18-5502 JACOBSON, SUSAN J. V. ARIZONA

18-5503 PRESTON, BRIAN V. GREAT LAKES SPECIALTY FINANCE

18-5506 SUNDAY, TIM V. FRIENDSHIP PAVILION, ET AL.

18-5507 SCHWARZMAN, MARK V. GRAY, WARDEN

18-5512 WILSON, GEORGE C. V. WISCONSIN

18-5513 TRAN, MY VAN V. SHELDON, WARDEN

18-5514 WILKINS, ROBERT A. V. VIRGINIA

18-5523 SANCHEZ, CHRIS V. DAVIS, DIR., TX DCJ

18-5531 CULVER, KELLY E. V. ZATECKY, SUPT., PENDLETON

18-5540 RUSH, DARNELL V. REWERTS, WARDEN

18-5544 LE, VAN V. ALDRIDGE, WARDEN

18-5545 LOPEZ, CARLOS D. V. CALIFORNIA

18-5546 COBLE, BILLIE W. V. DAVIS, DIR., TX DCJ

18-5553 WILLIAMS, CHRISTOPHER V. TEXAS

18-5566 LIBRACE, DAVID V. BERRYHILL, NANCY A.

18-5573 WILLIAMS, TAJUAN V. CAMPBELL, WARDEN

18-5600 BONNER, ANDREW K. V. UNITED STATES, ET AL.

18-5609 LaJEUNESSE, MICHAEL A. V. IOWA

18-5616 CLAYBORNE, ROBERT E. V. NEBRASKA



18-5623 WILLIAMS, GARLAND E. V. UNITED STATES, ET AL.  
18-5633 KENNEDY, MICHAEL A. V. MI STATE TREASURER  
18-5639 CASTLEMAN, DANIEL V. UNITED STATES  
18-5657 PASSMORE, TERENCE V. O'FALLON, DAN, ET AL.  
18-5661 WILLIAMS, CALVIN V. SAMSON RESOURCES CORP., ET AL.  
18-5666 DENNISON, ARTHUR V. HOOKS, WARDEN  
18-5669 CRUZ, PETER V. MASSACHUSETTS  
18-5688 EMANUEL, JOSEPH V. DEPT. OF JUSTICE  
18-5689 BRIDGETTE, GEORGE V. ASUNCION, WARDEN, ET AL.  
18-5698 BROWN, DEVONTE V. OHIO  
18-5713 DUNNING, LEONARD E. V. WARE, NANCY M.  
18-5743 SIMMONS, JOYCE V. UNITED STATES  
18-5747 AMADOR-FLORES, JAVIER V. UNITED STATES  
18-5749 AGOLLI, ANNA M. V. DISTRICT OF COLUMBIA, ET AL.  
18-5750 CUEVAS, SANTOS V. KELLY, SUPT., OR  
18-5753 PELLO, JAMES V. ZATECKY, SUPT., PENDLETON  
18-5797 GUTIERREZ-TORRES, CARLOS V. UNITED STATES  
18-5800 WILLIAMS, BRENT F. V. UNITED STATES  
18-5803 DURY, MATTHEW J. V. UNITED STATES  
18-5804 DIALLO, ABDOULAYE V. UNITED STATES  
18-5808 RONDON, RAFAEL A. V. UNITED STATES  
18-5809 SHARP, ROBERT C. V. UNITED STATES  
18-5814 CRUZ, BOBBY V. UNITED STATES  
18-5817 MOORER, JERMAINE V. UNITED STATES  
18-5823 MARSHALL, ALONZO D. V. UNITED STATES  
18-5824 LARIVE, JAMES E. V. UNITED STATES  
18-5825 JOHNSON, ERIC L. V. UNITED STATES

18-5826 CARTER, JOHN C. V. CALDWELL, WARDEN  
18-5828 LOPEZ-GARCIA, ADOLFO V. UNITED STATES  
18-5831 CURRY, WILLIE R. V. UNITED STATES  
18-5835 LIZARRAGA-LEYVA, JUAN F. V. UNITED STATES  
18-5839 REBMANN, JAMES F. V. UNITED STATES  
18-5840 STONEY, GEORGE V. UNITED STATES  
18-5842 CHHEA, RICKY B. V. DELBALSO, SUPT., MAHANOV, ET AL.  
18-5844 TINOCO, ROCCO V. UNITED STATES  
18-5845 PIERCE, DAVID L. V. UNITED STATES  
18-5846 WILKINS, DUSTIN X. V. UNITED STATES  
18-5847 GARCIA, JAIME S. V. UNITED STATES  
18-5849 SOZA, JOSE V. JONES, SEC., FL DOC, ET AL.  
18-5858 GLOOR, LANCE E. V. UNITED STATES  
18-5861 CHAVEZ, DANNY L. V. MARTINEZ, WARDEN  
18-5865 PENNINGTON, GARY L. V. CLARK, SUPT., ALBION, ET AL.  
18-5866 MOSLEY, NATHAN V. UNITED STATES  
18-5871 POSA, SAMUEL V. UNITED STATES  
18-5872 MEDINA-REYES, MIGUEL V. UNITED STATES  
18-5874 EDWARDS, NALENZER L. V. UNITED STATES  
18-5875 VIVO, JOHN V. CONNECTICUT  
18-5879 ENEH, EMORY D. V. UNITED STATES  
18-5882 VELA, DANIEL V. UNITED STATES  
18-5884 RICHARDSON, MATTHEW G. V. UNITED STATES  
18-5885 SHANNON, KENNETH K. V. UNITED STATES  
18-5890 WHITFIELD, MARK D. V. UNITED STATES  
18-5893 STREETMAN, DAN W. V. UNITED STATES  
18-5894 SHAW, LAWRENCE E. V. UNITED STATES

18-5895 IZATT, JUSTIN L. V. UNITED STATES  
18-5896 BAKER, BEVERLY A. V. UNITED STATES  
18-5899 LEWIS, RASHOD V. UNITED STATES  
18-5900 MARTINEZ-BARRIENTOS, JUAN C. V. UNITED STATES  
18-5901 MAXI, WILLIS V. UNITED STATES  
18-5904 CROSS, DONAVAN V. UNITED STATES  
18-5910 PACKARD, CURTIS D. V. GOODRICH, WARDEN, ET AL.  
18-5912 KIMMELL, ROBERT V. UNITED STATES  
18-5913 GARCIA, ALFONSO E. V. UNITED STATES  
18-5914 FINNEY, JEFFREY S. V. UNITED STATES  
18-5915 HILL, MICHAEL V. UNITED STATES  
18-5916 FLORES, JUAN V. UNITED STATES  
18-5917 DOE, JOHN V. UNITED STATES  
18-5921 STEVENS, JEFFREY A. V. UNITED STATES  
18-5928 LIMON-URENDA, RICARDO V. UNITED STATES  
18-5929 ODOM, DAVID T. V. UNITED STATES  
18-5933 WILKERSON, MARY V. UNITED STATES  
18-5934 WAGNER, DEBORAH M. V. UNITED STATES  
18-5935 VELASQUEZ, JULIO C. V. UNITED STATES  
18-5944 TANCO-PIZARRO, RAFAEL V. UNITED STATES  
18-5953 THORNE, ANTOWAN V. UNITED STATES  
18-5984 BEYAH, MURAD H. V. NEW JERSEY

The petitions for writs of certiorari are denied.

18-35 PENNSYLVANIA V. JOHNSON, RODERICK A.

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is denied.

18-112 DAY, JUDGE V. OR COMM'N ON JUDICIAL FITNESS

The motion of Freedom of Conscience Defense Fund for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

18-210 BATS GLOBAL MARKETS, ET AL. V. PROVIDENCE, RI, ET AL.

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

18-231 NEW WEST, ET AL. V. JOLIET, IL, ET AL.

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

18-5560 BEAUCHAMP, ERIC C. V. DOGLIETTO, D. J., ET AL.

18-5583 TURNER, STEPHEN B. V. SMITH, MELODY, ET AL.

The petitions for writs of certiorari are denied. Justice Breyer took no part in the consideration or decision of these petitions.

18-5704 AUSTIN, ROBERT V. DIST. ATT'Y OF PHILADELPHIA CTY.

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

18-5810 RIVERA, LAUREANO R. V. UNITED STATES

18-5811 ESCOBAR DE JESUS, EUSEBIO V. UNITED STATES

The petitions for writs of certiorari are denied. Justice Kagan took no part in the consideration or decision of these petitions.

18-5930 WALKER, TIMOTHY V. UNITED STATES

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

**HABEAS CORPUS DENIED**

18-5976 IN RE JAAME AMUN RE EL

The petition for a writ of habeas corpus is denied.

18-5952 IN RE SAMUEL H. WILLIAMS

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

18-6034 IN RE GREGORY W. BURWELL

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

**MANDAMUS DENIED**

18-5852 IN RE SONTAY T. SMOTHERMAN

The petition for a writ of mandamus is denied.

18-5454 IN RE DEBORAH E. GOUCH-ONASSIS

18-5455 IN RE DEBORAH E. GOUCH-ONASSIS

18-5551 IN RE RAFAEL A. JOSEPH

The motions of petitioners for leave to proceed *in forma pauperis* are denied, and the petitions for writs of mandamus are dismissed. See Rule 39.8.

18-5575 IN RE ALLAH

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

abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin v. District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

**REHEARING DENIED**

17-8324

WELLS, GLYNN L. V. HARRY, WARDEN

The petition for rehearing is denied.

Statement of SOTOMAYOR, J.

**SUPREME COURT OF THE UNITED STATES**

JONATHAN APODACA, ET AL.

17–1284

*v.*

RICK RAEMISCH, ET AL.

DONNIE LOWE

17–1289

*v.*

RICK RAEMISCH, ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Nos. 17–1284 and 17–1289. Decided October 9, 2018

The petitions for writs of certiorari are denied.

Statement of JUSTICE SOTOMAYOR respecting the denial of certiorari.

A punishment need not leave physical scars to be cruel and unusual. See *Trop v. Dulles*, 356 U. S. 86, 101 (1958). As far back as 1890, this Court expressed concerns about the mental anguish caused by solitary confinement.<sup>1</sup> These petitions address one aspect of what a prisoner subjected to solitary confinement may experience: the denial of even a moment in daylight for months or years. Although I agree with the Court’s decision not to grant certiorari in these cases because of arguments unmade and facts underdeveloped below, I write because the issue raises deeply troubling concern.

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<sup>1</sup>See *In re Medley*, 134 U. S. 160, 168 (1890) (“[E]xperience demonstrated that there were serious objections to it. A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others, still, committed suicide, while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community”).

Statement of SOTOMAYOR, J.

I

Petitioners Jonathan Apodaca, Joshua Vigil, and Donnie Lowe were all previously incarcerated in the Colorado State Penitentiary (CSP). During that time, they were held in what is often referred to as “administrative segregation,” but what is also fairly known by its less euphemistic name: solitary confinement. As described in a prior case involving the same prison’s conditions:

“In administrative segregation at the CSP, each offender is housed in a single cell approximately 90 square feet in size. . . . The cell contains a metal bed, desk, toilet and three shelves. There is [a] small vertical glass window that admits light but which, because of its placement in relation to the bed, desk and shelving, is difficult to access to look out. A light in the cell is left on 24 hours a day. The inmates’ daily existence is one of extreme isolation. They remain in their cells at least 23 hours a day. The cells were designed in a manner that discourages and largely restricts vocal communication between cells. [One prisoner could] hear other people yelling and screaming but not conversations. All meals are passed through a slot in the cell door to the inmate. The inmates have little human contact except with prison staff and limited opportunities for visitors . . . .” *Anderson v. Colorado*, 887 F. Supp. 2d 1133, 1137 (Colo. 2012).

Under then-operative Colorado Department of Corrections (CDOC) regulations, prisoners like Apodaca, Vigil, and Lowe were allowed out of their cells five days per week, for at least “one hour of recreation in a designated exercise area.” CDOC Reg. No. 650–03, p. 7 (May 15, 2012). That “designated exercise area” was also about 90 square feet in size, but “oddly shaped” and “empty except for a chin-up bar.” *Anderson*, 887 F. Supp. 2d, at 1137. As the prior district court described it:



Statement of SOTOMAYOR, J.

“It has two vertical ‘windows,’ approximately five feet by six inches in size, which are not glassed but instead are covered with metal grates. The grates have holes approximately the size of a quarter that open to the outside. The inmate can see through the holes, can sometimes feel a breeze, and can sometimes feel the warmth of the sun. This is his only exposure of any kind to fresh air.” *Ibid.*

During their time at CSP, Apodaca, Vigil, and Lowe were denied any out-of-cell exercise other than the prescribed hour in that room for between 11 and 25 months.<sup>2</sup> In 2015, Lowe, individually, and Apodaca and Vigil, on behalf of themselves and others similarly situated, filed lawsuits seeking damages under Rev. Stat. §1979, 42 U. S. C. §1983, in the District of Colorado, alleging that this deprivation violated their Eighth Amendment rights to be free from cruel and unusual punishment. Respondents, CDOC Executive Director Rick Raemisch and CSP Warden Travis Trani, moved to dismiss both cases.<sup>3</sup> The District Court denied both motions to dismiss. The U. S. Court of Appeals for the Tenth Circuit reversed both denials, concluding that its prior precedents allowed “reasonable debate on the constitutionality of disallowing

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<sup>2</sup>For Apodaca and Vigil, the deprivation lasted 11 months—from September 2013 to August 2014. Complaint in *Apodaca v. Raemisch*, No. 15-cv-845 (D Colo.), Doc. 1, pp. 16–17. For Lowe, it lasted 25 months—from February 2013 to March 2015. Complaint in *Lowe v. Raemisch*, No. 15-cv-1830 (D Colo.), Doc. 1, p. 20–21 (Complaint). All three were later either transferred or released from prison. Brief in Opposition 1. Lowe has since passed away. Reply Brief 2.

<sup>3</sup>With regard to Apodaca and Vigil’s 11-month deprivation, respondents both contested that there was an Eighth Amendment violation and claimed qualified immunity. See Motion to Dismiss or Motion for Summary Judgment in *Apodaca*, Doc. 18, pp. 6–11. With regard to Lowe’s 25-month deprivation, respondents did not contest that there was an Eighth Amendment violation but did again claim qualified immunity. See Motion to Dismiss in *Lowe*, Doc. 10, pp. 7–13.

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outdoors exercise for two years and one month” in Lowe’s case, 864 F. 3d 1205, 1209 (2017), or, moreover, 11 months in Apodaca and Vigil’s case, 864 F. 3d 1071, 1078 (2017).

Apodaca, Vigil, and Lowe petitioned this Court for certiorari, arguing that the Tenth Circuit had diverged from the common practice among the Courts of Appeals of allowing a deprivation of outdoor exercise only when it was supported by a sufficient security justification. See Pet. for Cert. in No. 17–1284, pp. 2–3; Pet. for Cert. in No. 17–1289, pp. 2–3. Petitioners are correct that the presence (or absence) of a particularly compelling security justification has, rightly, played an important role in the analysis of the Courts of Appeals.<sup>4</sup> But the litigation before the lower courts here did not focus on the presence or absence of a valid security justification, and therefore the factual record before this Court—as well as the legal analysis provided by the lower courts—is not well suited to our considering the question now.<sup>5</sup> Despite my deep

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<sup>4</sup>See, e.g., *Pearson v. Ramos*, 237 F. 3d 881, 884–885 (CA7 2001) (reversing judgment for plaintiff who was denied outdoor exercise for a year after a series of serious infractions, including beating a guard to the point that he was hospitalized, setting a fire that prompted an evacuation, and throwing bodily fluids in a medical technician’s face); *Bass v. Perrin*, 170 F. 3d 1312, 1316–1317 (CA11 1999) (affirming summary judgment for defendants where the plaintiffs had, between them, been convicted of aggravated battery, murder, and attempted murder since their incarceration and each had attempted to escape during outdoor recreation); *Spain v. Procnier*, 600 F. 2d 189, 200 (CA9 1979) (affirming injunctive relief in the absence of “an adequate justification” from the State for not providing outdoor exercise for over four years).

<sup>5</sup>For example, the CDOC regulations in effect during the relevant time period outlined particular conduct that could justify the imposition of solitary confinement, including, for example, attempting to harm seriously or kill another person, organizing or inciting a riot, or attempting to escape from a secure facility. See CDOC Reg. No. 650–03, p. 4 (May 15, 2012). But those regulations also included provisions that could be questionable in their application, including a catchall for “[o]ther circumstances.” See *ibid.* Here, we have not been presented

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misgivings about the conditions described, I therefore concur in the Court’s denial of certiorari. Cf. *Perez v. Florida*, 580 U. S. \_\_\_, \_\_\_ (2017) (SOTOMAYOR, J., concurring in denial of certiorari).

## II

I write to note, however, that what is clear all the same is that to deprive a prisoner of any outdoor exercise for an extended period of time in the absence of an especially strong basis for doing so is deeply troubling—and has been recognized as such for many years. Then-Judge Kennedy observed as much in 1979, ruling that, in the absence of “an adequate justification” from the State, “it was cruel and unusual punishment for a prisoner to be confined for a period of years without opportunity to go outside except for occasional court appearances, attorney interviews, and hospital appointments.” *Spain v. Procunier*, 600 F.2d 189, 200 (CA9 1979). And while he acknowledged that various security concerns—including the safety of staff and other prisoners and preventing escape—could “justify not permitting plaintiffs to mingle with the general prison population,” he observed that those generalized concerns did “not explain why other exercise arrangements were not made.” *Ibid.* The same inquiry remains essential today, given the vitality—recognized by the Tenth Circuit in other cases<sup>6</sup>—of the basic human need at issue. It

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with facts in the record explaining what led to this extreme condition of confinement being imposed on Apodaca, Vigil, or Lowe, or, similarly, whether permitting outdoor exercise would have meaningfully increased any of the potential risks.

<sup>6</sup>See *Fogle v. Pierson*, 435 F.3d 1252, 1260 (2006) (“[W]e think it is clear that a factfinder might conclude that the risk of harm from three years of deprivation of any form of outdoor exercise was obvious”); *Perkins v. Kansas Dept. of Corrections*, 165 F.3d 803, 810 (1999) (“[W]e conclude the district court here erred when it held that plaintiff’s allegations about the extended deprivation of outdoor exercise showed no excessive risk to his well-being” (internal quotation marks and

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should be clear by now that our Constitution does not permit such a total deprivation in the absence of a particularly compelling interest.

Two Justices of this Court have recently called attention to the broader Eighth Amendment concerns raised by long-term solitary confinement. See *Ruiz v. Texas*, 580 U. S. \_\_\_, \_\_\_–\_\_\_ (BREYER, J., dissenting from denial of stay of execution); *Davis v. Ayala*, 576 U. S. \_\_\_, \_\_\_–\_\_\_ (2015) (Kennedy, J., concurring). Those writings came in cases involving capital prisoners, but it is important to remember that the issue sweeps much more broadly: whereas fewer than 3,000 prisoners are on death row, a recent study estimated that 80,000 to 100,000 people were held in some form of solitary confinement.<sup>7</sup> The Eighth Amendment, of course, protects them all.

Lowe himself, respondents tell us, was convicted of second-degree burglary and introduction of contraband—and he evidently spent 11 years in solitary confinement. See Brief in Opposition 1, n. 1; Complaint, at 5. It is hard to see how those 11 years could have prepared him for the day in July 2015 when he “was released from solitary confinement directly to the streets,” though his Complaint mentions that he had found “wor[k] doing construction labor and [was] striving to establish a life on the streets.” *Ibid.* While we do not know what caused his death in May 2018, see Reply Brief 2, n. 2, we do know that solitary

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alteration omitted); *Bailey v. Shillinger*, 828 F.2d 651, 653 (1987) (“There is substantial agreement among the cases in this area that some form of regular outdoor exercise is extremely important to the psychological and physical well being of inmates, and some courts have held a denial of fresh air and exercise to be cruel and unusual punishment under certain circumstances”).

<sup>7</sup>See Dept. of Justice, Bureau of Justice Statistics, E. Davis & T. Snell, *Capital Punishment*, 2016, p. 2 (Apr. 2018); The Liman Program & Assn. of State Correctional Adm’rs, *Time-In-Cell: The ASCA-Liman 2014 National Survey of Administrative Segregation in Prison*, p. ii (Aug. 2015).

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confinement imprints on those that it clutches a wide range of psychological scars.<sup>8</sup>

Respondent Raemisch, CDOC’s executive director, himself has acknowledged the ills of solitary confinement,<sup>9</sup> and I note that Colorado has in recent years revised its regulations such that it now allows all inmates “access to outdoor recreation” for at least one hour, three times per week, subject to “security or safety considerations.”<sup>10</sup> Those changes cannot undo what petitioners, and others similarly situated, have experienced, but they are nevertheless steps toward a more humane system.

More steps may well be needed. Justice Kennedy, in his *Ayala* concurrence, 576 U. S., at \_\_\_\_, referenced Charles Dickens’s depiction of the ravages of solitary confinement

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<sup>8</sup>See, e.g., *Davis v. Ayala*, 576 U. S. \_\_\_\_, \_\_\_\_ (2015) (Kennedy, J., concurring) (detailing psychological effects and citing story of 16-year-old who was held in pretrial solitary confinement for three years and committed suicide two years after his release); *Grissom v. Roberts*, 2018 WL 4102891, \*9–\*11 (CA10, Aug. 29, 2018) (Lucero, J., concurring); see also B. Stevenson, *Just Mercy* 153 (2014) (recounting story of juvenile prisoner whose “mental health unraveled” in solitary, yielding self-harm and multiple suicide attempts). See generally Bennion, *Banning the Bing: Why Extreme Solitary Confinement Is Cruel and Far Too Usual Punishment*, 90 Ind. L. J. 741, 753–763 (2015); Betts, *Only Once I Thought About Suicide*, 125 Yale L. J. Forum 222 (2016); Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J. L. & Pol’y 325 (2006); Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 Crime & Justice 441 (2006); Calambokidis, *Note, Beyond Cruel and Unusual: Solitary Confinement and Dignitary Interests*, 68 Ala. L. Rev. 1117, 1150–1155 (2017);

<sup>9</sup>See Raemisch, *Why We Ended Long-Term Solitary Confinement in Colorado*, N. Y. Times, Oct. 12, 2017, p. A25 (“It is time for this unethical tool to be removed from the penal toolbox”); Raemisch, *My Night in Solitary*, N. Y. Times, Feb. 21, 2014, p. A25 (“I felt as if I’d been there for days. I sat with my mind. How long would it take before Ad Seg chipped that away? I don’t know, but I’m confident that it would be a battle I would lose”).

<sup>10</sup>CDOC Reg. No. 600–09, p. 7 (Jan. 1, 2018).

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in *A Tale of Two Cities*, but it is worth appreciating that the portrayal referenced was not merely the result of a skilled novelist's imagination. In 1842, Dickens recounted his real-life visit to Philadelphia's Eastern State Penitentiary, in which he described the prisoners housed in solitary confinement there:

“[The prisoner] is led to the cell from which he never again comes forth, until his whole term of imprisonment has expired. He never hears of wife and children; home or friends; the life or death of any single creature. He sees the prison-officers, but with that exception he never looks upon a human countenance, or hears a human voice. He is a man buried alive; to be dug out in the slow round of years; and in the meantime dead to everything but torturing anxieties and horrible despair.” C. Dickens, *American Notes for General Circulation* 148 (J. Whitley & A. Goldman eds. 1972).

Dickens did not question the penal officers' motives. He concluded, rather, that they did “not know what it is that they are doing” and that “very few” were “capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers.” *Id.*, at 146. The pain caused was invisible and inaudible, such that “slumbering humanity” was “not roused up” to put a stop to it. *Id.*, at 147.

We are no longer so unaware. Courts and corrections officials must accordingly remain alert to the clear constitutional problems raised by keeping prisoners like Apodaca, Vigil, and Lowe in “near-total isolation” from the living world, see *Ayala*, 576 U. S., at \_\_\_ (Kennedy, J., concurring) (slip op., at 4), in what comes perilously close to a penal tomb.