(ORDER LIST: 603 U.S.)

TUESDAY, JULY 2, 2024

CERTIORARI -- SUMMARY DISPOSITIONS

22-863 DIAZ-RODRIGUEZ, RAFAEL V. GARLAND, ATT'Y GEN.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Ninth Circuit for further consideration in light of *Loper Bright Enterprises* v. *Raimondo*, 603 U. S. ___ (2024).

22-868 BASTIAS, ARIEL M. V. GARLAND, ATT'Y GEN.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of *Loper Bright Enterprises* v. *Raimondo*, 603 U. S. ___ (2024).

22-1246 EDISON ELEC. INST., ET AL. V. FERC, ET AL.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the District of Columbia Circuit for further consideration in light of *Loper Bright Enterprises* v. *Raimondo*, 603 U. S. ___ (2024).

22-7630 McCALL, DANIEL N. 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 Eleventh Circuit for further

consideration in light of *Erlinger* v. *United States*, 602 U. S. ___ (2024).

23-32) LANG, EDWARD J. V. UNITED STATES
)
23-94) MILLER, GARRET V. UNITED STATES

The petitions for writs of certiorari are granted. The judgment is vacated, and the cases are remanded to the United States Court of Appeals for the District of Columbia Circuit for further consideration in light of *Fischer* v. *United States*, 603 U. S. ___ (2024).

23-133 FOSTER, ARLEN V. DEPT. OF AGRICULTURE, ET AL.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eighth Circuit for further consideration in light of *Loper Bright Enterprises* v. *Raimondo*, 603 U. S. ___ (2024).

23-374 GARLAND, ATTY GEN. V. RANGE, BRYAN D.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Third Circuit for further consideration in light of *United States* v. *Rahimi*, 602 U. S. ___ (2024).

23-376 UNITED STATES V. DANIELS, PATRICK D.

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of *United States* v. *Rahimi*, 602 U. S. ___ (2024).

23-413 LISSACK, MICHAEL V. CIR

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the District of Columbia Circuit for further consideration in light of *Loper Bright Enterprises* v. *Raimondo*, 603 U. S. ___ (2024).

23-455 UNITED STATES V. PEREZ-GALLAN, LITSSON A.

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of *United States* v. *Rahimi*, 602 U. S. ___ (2024).

23-538 CRUZ CRUZ, MOISES V. GARLAND, ATT'Y GEN.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fourth Circuit for further consideration in light of *Loper Bright Enterprises* v. *Raimondo*, 603 U. S. ___ (2024).

23-558 UNITED NATURAL FOODS, INC. V. NLRB

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of *Loper Bright Enterprises* v. *Raimondo*, 603 U. S. ___ (2024).

23-683 VINCENT, MELYNDA V. GARLAND, ATT'Y GEN.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United

States Court of Appeals for the Tenth Circuit for further consideration in light of *United States* v. *Rahimi*, 602 U. S. ___ (2024).

23-847 TURTLE MOUNTAIN BAND, ET AL. V. ND LEGISLATIVE ASSEMBLY, ET AL.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eighth Circuit with instructions to dismiss the case as moot. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950). Justice Jackson, dissenting: In my view, the party seeking vacatur has not established equitable entitlement to that remedy. See *Acheson Hotels, LLC* v. *Laufer*, 601 U. S. 1, 18-20 (2023) (Jackson, J., concurring in the judgment).

23-876 KC TRANSPORT, INC. V. SU, ACTING SEC. OF LABOR, ET AL.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the District of Columbia Circuit for further consideration in light of *Loper Bright Enterprises* v. *Raimondo*, 603 U. S. ___ (2024).

23-910 ANTONYUK, IVAN, ET AL. V. JAMES, STEVEN G., ET AL.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Second Circuit for further consideration in light of *United States* v. *Rahimi*, 602 U. S. ___ (2024).

23-913 SOLIS-FLORES, CESAR V. GARLAND, ATT'Y GEN.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United

States Court of Appeals for the Fourth Circuit for further consideration in light of *Loper Bright Enterprises* v. *Raimondo*, 603 U. S. ___ (2024).

23-5457 THOMAS, DEANGELUS 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 *Erlinger* v. *United States*, 602 U. S. ___ (2024).

23-5606 VALENCIA, SAMUEL 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 Fifth Circuit for further consideration in light of *Erlinger* v. *United States*, 602 U. S. ___ (2024).

23-6013 COGDILL, CALVIN 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 *Erlinger* v. *United States*, 602 U. S. ___ (2024).

23-6038 WASHINGTON, LAKEITH L. 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 Fifth Circuit for further consideration in light of *Erlinger* v. *United States*, 602 U. S. ___ (2024).

23-6170 JACKSON, EDELL 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 Eighth Circuit for further consideration in light of *United States* v. *Rahimi*, 602 U. S. ___ (2024).

23-6177 OLIVAS, SYLVIA 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 Ninth Circuit for further consideration in light of *Diaz* v. *United States*, 602 U. S. ___ (2024).

23-6433 BROWN, RICO L. 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 Fourth Circuit for further consideration in light of *Erlinger* v. *United States*, 602 U. S. ___ (2024).

23-6579 HAMEEN, JAMAAL A. 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 Eleventh Circuit for further consideration in light of *Erlinger* v. *United States*, 602 U. S. ___ (2024).

23-6602 CUNNINGHAM, SYLVESTER 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 Eighth Circuit for further consideration in light of *United States* v. *Rahimi*, 602 U. S. ___ (2024).

23-6631 ROBINSON, JEREMY D. 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 Eighth Circuit for further consideration in light of *Erlinger* v. *United States*, 602 U. S. ___ (2024).

23-6786 McNEIL, CARL R. 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 Fourth Circuit for further consideration in light of *Erlinger* v. *United States*, 602 U. S. ___ (2024).

23-6842 DOSS, REGINALD C. 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 Eighth Circuit for further consideration in light of *United States* v. *Rahimi*, 602 U. S. ___ (2024).

CERTIORARI GRANTED

23-929 MONSALVO VELAZQUEZ, HUGO A. V. GARLAND, ATT'Y GEN.

The petition for a writ of certiorari is granted.

23-1002) HEWITT, TONY R. V. UNITED STATES
)
23-1150) DUFFEY, COREY D., ET AL. V. UNITED STATES

The petitions for writs of certiorari are granted. The cases are consolidated, and a total of one hour is allotted for oral argument.

23-1038 FDA V. WAGES AND WHITE LION, ET AL.

23-1122 FREE SPEECH COALITION, ET AL. V. PAXTON, ATT'Y GEN. OF TX

The petitions for writs of certiorari are granted.

CERTIORARI DENIED

22-631) HIGHLAND CAPITAL MGMT. V. NEXPOINT ADVISORS, ET AL.
)
22-669) NEXPOINT ADVISORS, ET AL. V. HIGHLAND CAPITAL MGMT., ET AL.

22-867 KERR, KADEEN K. V. GARLAND, ATT'Y GEN.

22-1199 O'HANDLEY, ROGAN V. WEBER, CA SEC. OF STATE, ET AL.

23-189 DEBIQUE, WAYNE P. V. GARLAND, ATT'Y GEN.

23-348 COLINDRES, KRISTEN H., ET AL. V. DEPT. OF STATE, ET AL.

23-569 REED, RODNEY V. TEXAS

23-650 JORDAN, LAURA, ET AL. V. UNITED STATES

23-831 CASWELL, CONSTANCE E. V. COLORADO

23-1028 POE, SHANNON V. IDAHO CONSERVATION LEAGUE

23-1062 CHANGIZI, MARK, ET AL. V. DEPT. OF H&HS, ET AL.

23-6340 STOWELL, CHRISTOPHER V. UNITED STATES

23-6795 TAYLOR, GREGORY V. UNITED STATES

The petitions for writs of certiorari are denied.

SUPREME COURT OF THE UNITED STATES

LISA PRICE, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF NICKIE MILLER *v.* MONTGOMERY COUNTY, KENTUCKY, ET AL.

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

No. 23–649. Decided July 2, 2024

The petition for a writ of certiorari is denied.

Statement of JUSTICE SOTOMAYOR respecting the denial of certiorari.

Nickie Miller was charged with murder based on the false confession of a witness. The witness later recanted her coerced confession, including in jailhouse letters she sent to her husband. Upon learning about the letters, a court ordered the witness to retrieve and turn them over to Miller's defense team. The lead prosecutor on Miller's case, Keith Craycraft, instead allegedly encouraged the witness to destroy the letters in response to the court order. The witness destroyed the letters instead of turning them over.

Miller spent two years in prison before the State dropped the charges against him. Miller then sued Craycraft and others under Rev. Stat. §1979, 42 U. S. C. §1983, for malicious prosecution, fabrication and destruction of evidence, due process violations, and conspiracy. The District Court dismissed the claims against Craycraft, concluding that he had absolute immunity as a prosecutor. The Sixth Circuit agreed, but noted that Craycraft's "successful pressuring of [the witness] to destroy her jailhouse correspondence" was "difficult to justify and seemingly unbecoming of an official entrusted with enforcing the criminal law." 72 F. 4th 711, 720 (2023). Miller now asks this Court to decide whether absolute immunity is available under §1983 when, as here, a prosecutor knowingly destroys exculpatory evidence and

defies a court order. Pet. for Cert. i.

The Court's denial of certiorari should not signal tolerance of the prosecutor's conduct.[1] The allegations, assumed true at this stage of the case, tell a disturbing story. Prosecutors are "representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Berger* v. *United States*, 295 U. S. 78, 88 (1935). The prosecutor's conduct in this case "diminishes the dignity of our criminal justice system and undermines respect for the rule of law." *Calhoun* v. *United States*, 568 U. S. 1206, 1208 (2013) (SOTOMAYOR, J., statement respecting denial of certiorari).

Prosecutorial immunity can promote "the vigorous and fearless performance of the prosecutor's duty." *Imbler* v. *Pachtman*, 424 U. S. 409, 427 (1976). This immunity has limits, however. For example, absolute immunity does not apply "when a prosecutor gives advice to police during a criminal investigation, when the prosecutor makes statements to the press, or when a prosecutor acts as a complaining witness in support of a warrant application." *Van de Kamp* v. *Goldstein*, 555 U. S. 335, 343 (2009) (citations omitted).[2] It is difficult to see how the conduct alleged here,

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[1] The Court may deny certiorari for many reasons, including that the facts presented by a petition do not clearly or cleanly implicate a division of authority among the lower courts. See this Court's Rule 10.

[2] Absolute prosecutorial immunity in theory is limited to "the immunity historically accorded . . . at common law and the interests behind it." *Imbler*, 424 U. S., at 421; but see *Kalina* v. *Fletcher*, 522 U. S. 118, 132 (1997) (Scalia, J., concurring) ("There was, of course, no such thing as absolute prosecutorial immunity when §1983 was enacted"). Further, as Judge Nalbandian discussed in his opinion below, recent scholarship details that the 1871 Civil Rights Act included language abrogating common-law immunities that was, for unknown reasons, omitted from the

including destruction of evidence to thwart a court order, "require[s] legal knowledge and the exercise of related discretion," *id.*, at 344, or is "intimately associated with the judicial phase of the criminal process," *Imbler*, 424 U. S., at 430.

Even when absolute prosecutorial immunity applies, it "does not leave the public powerless to deter misconduct or to punish that which occurs." *Id.*, at 429. Prosecutors accused of misconduct may still face criminal liability or "professional discipline." *Ibid.*; see also *Connick* v. *Thompson*, 563 U. S. 51, 66 (2011) ("An attorney who violates his or her ethical obligations is subject to professional discipline, including sanctions, suspension, and disbarment"). Yet, these safeguards are effective only if employed.[3]

Craycraft's alleged misconduct of advising a witness to destroy evidence to thwart a court order is stunning. If this is what absolute prosecutorial immunity protects, the Court may need to step in to ensure that the doctrine does not exceed its "'quite sparing'" bounds. *Buckley* v. *Fitzsimmons*, 509 U. S. 259, 269 (1993). Otherwise, we risk leaving "victims of egregious prosecutorial misconduct without a remedy." *Michaels* v. *McGrath*, 531 U. S. 1118, 1119 (2001) (THOMAS, J., dissenting from denial of certiorari).

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first compilation of federal law. 72 F. 4th 711, 727, n. 1 (CA6 2023) (opinion concurring in part and concurring in judgment) ("So, according to this recent scholarship, because the Civil Rights Act of 1871 explicitly abrogated the common-law immunities grounded in state law, those immunities are abrogated now *sub silentio* under the current version of §1983" (citing *Rogers* v. *Jarrett*, 63 F. 4th 971, 980 (CA5 2023) (Willet, J., concurring)); Civil Rights Act of 1871, 17 Stat. 13; A. Reinert, Qualified Immunity's Flawed Foundation, 111 Cal. L. Rev. 201, 235 (2023)). This new scholarship reinforces why, at a minimum, this immunity doctrine should be employed sparingly.

[3] See, *e.g.*, R. Barkow, Organizational Guidelines for the Prosecutor's Office, 31 Cardozo L. Rev. 2089, 2094 (2010) (observing that "criminal actions against prosecutors who willfully violate a defendant's constitutional rights . . . are almost never brought," "[n]or are prosecutors typically punished by their supervisors or removed from office").

SUPREME COURT OF THE UNITED STATES

DANE HARREL, ET AL.
23–877 *v.*
KWAME RAOUL, ATTORNEY GENERAL OF ILLINOIS, ET AL.

JAVIER HERRERA
23–878 *v.*
KWAME RAOUL, ATTORNEY GENERAL OF ILLINOIS, ET AL.

CALEB BARNETT, ET AL.
23–879 *v.*
KWAME RAOUL, ATTORNEY GENERAL OF ILLINOIS, ET AL.

NATIONAL ASSOCIATION FOR GUN RIGHTS, ET AL.
23–880 *v.*
CITY OF NAPERVILLE, ILLINOIS, ET AL.

JEREMY W. LANGLEY, ET AL.
23–944 *v.*
BRENDAN F. KELLY, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE ILLINOIS STATE POLICE, ET AL.

GUN OWNERS OF AMERICA, INC., ET AL.
23–1010 *v.*
KWAME RAOUL, ATTORNEY GENERAL OF ILLINOIS, ET AL.

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

Nos. 23–877, 23–878, 23–879, 23–880, 23–944,

The petitions for writs of certiorari are denied. JUSTICE ALITO would grant the petitions for writs of certiorari.

Statement of JUSTICE THOMAS.

The State of Illinois enacted a law that makes it a felony to possess what Illinois branded "assault weapons," a term defined to include AR–15s. See Ill. Comp. Stat., ch. 720, §5/24–1.9(a)(1)(J)(ii)(II) (West 2023). "The AR–15 is the most popular semi-automatic rifle" in America and is therefore undeniably "in common use today." *Heller* v. *District of Columbia*, 670 F. 3d 1244, 1287 (CADC 2011) (KAVANAUGH, J., dissenting); see also *Garland* v. *Cargill*, 602 U. S. 406, 430–431 (2024) (SOTOMAYOR, J., dissenting) (describing "semiautomatic rifles" such as the AR–15 as "commonly available"). Petitioners sought a preliminary injunction against the enforcement of the law, arguing that the law violates their Second Amendment right to "keep and bear Arms." The Court of Appeals for the Seventh Circuit rejected petitioners' request for a preliminary injunction, concluding "that the AR–15 . . . is not protected by the Second Amendment." *Bevis* v. *Naperville*, 85 F. 4th 1175, 1197 (2023). According to the Seventh Circuit, the rifle selected by millions of Americans for self-defense and other lawful purposes does not even fall within the scope of the Arms referred to by the Second Amendment. *Ibid.* This Court is rightly wary of taking cases in an interlocutory posture. But, I hope we will consider the important issues presented by these petitions after the cases reach final judgment.

We have never squarely addressed what types of weapons are "Arms" protected by the Second Amendment. To be sure, we explained in *District of Columbia* v. *Heller*, 554 U. S. 570 (2008), that the Second Amendment's protection "extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the

time of the founding." *Id.*, at 582. And, we noted that "the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes," *id.*, at 625, recognizing "the historical tradition of prohibiting the carrying of dangerous and unusual weapons," *id.*, at 627 (internal quotation marks omitted); see also *Caetano* v. *Massachusetts*, 577 U. S. 411, 417–419 (2016) (ALITO, J., concurring in judgment). But, this minimal guidance is far from a comprehensive framework for evaluating restrictions on types of weapons, and it leaves open essential questions such as what makes a weapon "bearable," "dangerous," or "unusual."

The Seventh Circuit's decision illustrates why this Court must provide more guidance on which weapons the Second Amendment covers. By contorting what little guidance our precedents provide, the Seventh Circuit concluded that the Second Amendment does not protect "militaristic" weapons. See 85 F. 4th, at 1199. It then tautologically defined "militaristic" weapons as those "that may be reserved for military use." *Id.*, at 1194. The Seventh Circuit's contrived "non-militaristic" limitation on the Arms protected by the Second Amendment seems unmoored from both text and history. See *Friedman* v. *Highland Park*, 577 U. S. 1039, 1041 (2015) (THOMAS, J., dissenting from denial of certiorari). And, even on its own terms, the Seventh Circuit's application of its definition is nonsensical. See 85 F. 4th, at 1222 (Brennan, J., dissenting) ("The AR–15 is a civilian, not military, weapon. No army in the world uses a service rifle that is only semiautomatic"). In my view, Illinois' ban is "highly suspect because it broadly prohibits common semiautomatic firearms used for lawful purposes." *Friedman*, 577 U. S., at 1042 (opinion of THOMAS, J.). It is difficult to see how the Seventh Circuit could have concluded that the most widely owned semiautomatic rifles are not "Arms" protected by the Second Amendment.

These petitions arise from a preliminary injunction, and

the Seventh Circuit stressed that its merits analysis was merely "a preliminary look at the subject." 85 F. 4th, at 1197. But, if the Seventh Circuit ultimately allows Illinois to ban America's most common civilian rifle, we can—and should—review that decision once the cases reach a final judgment. The Court must not permit "the Seventh Circuit [to] relegat[e] the Second Amendment to a second-class right." *Friedman*, 577 U. S., at 1043 (opinion of THOMAS, J.).

SUPREME COURT OF THE UNITED STATES

CHARLES C. MCCRORY *v.* ALABAMA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

No. 23–6232. Decided July 2, 2024

The petition for a writ of certiorari is denied.

Statement of JUSTICE SOTOMAYOR respecting the denial of certiorari.

What should a court do when faced with a 40-year-old conviction resting on science that has now been wholly discredited? A court has a variety of tools to test the reliability of forensic evidence introduced in criminal trials today. Yet when a court must look backward, to convictions resting on forensic evidence later repudiated by the scientific community, those tools may fail.

This petition raises difficult questions about the adequacy of current postconviction remedies to correct a conviction secured by what we now know was faulty science. One in four people exonerated since 1989 were wrongfully convicted based on false or misleading forensic evidence introduced at their trials.[1] Hundreds if not thousands of innocent people may currently be incarcerated despite a modern consensus that the central piece of evidence at their trials lacked any scientific basis.

Petitioner Charles M. McCrory was convicted of murder in 1985 based on forensic bitemark testimony that has now been roundly condemned by the scientific community and retracted by the expert who introduced it at his trial.

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[1] Since 1989, 3,545 people have been exonerated, meaning they were wrongly convicted of a crime. See Nat'l Registry of Exonerations, https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx. Of these wrongful convictions, over 1,000 rested in part on forensic evidence now known to have been false or misleading. See *ibid.*

McCrory argues to this Court that this now-discredited forensic evidence rendered his trial fundamentally unfair in violation of the Due Process Clause. Even if that were true, McCrory faces many procedural hurdles that could delay or even preclude relief based on existing state and federal postconviction statutes. I vote to deny this petition because due process claims like McCrory's have yet to percolate sufficiently through the federal courts. Legislatures concerned with wrongful convictions based on faulty science, however, need not wait for this Court to address a constitutional remedy. Several States have already tackled this troubling problem through targeted postconviction statutes. These statutes create an efficient avenue for innocent people convicted based on forensic science that the scientific community has now largely repudiated.

I

A

The wholesale reevaluation of forensic evidence began in 2005, when Congress instructed the National Academy of Sciences to investigate the state of forensic science. The Academy responded four years later with a groundbreaking 314-page report that strongly suggested many forms of forensic evidence that previously had been accepted by courts were, in fact, scientifically unsound. See National Research Council, Strengthening Forensic Science in the United States: A Path Forward (2009) (NAS Report). It found that "no forensic method other than nuclear DNA analysis has been rigorously shown to have the capacity to consistently and with a high degree of certainty support conclusions . . . 'matching' . . . an unknown item of evidence to a specific known source." *Id.*, at 87.

The NAS Report singled out disciplines based on an expert's subjective interpretation (as opposed to analysis in a laboratory). Among those disciplines singled out for critique were bitemark analysis, microscopic hair analysis,

fingerprint analysis, shoe print comparisons, toolmark and firearms examination, and handwriting comparisons.[2] For instance, the NAS Report found "no evidence of an existing scientific basis for identifying an individual to the exclusion of all others" via bitemark evidence, *id.*, at 176, and "no scientific support for the use of hair comparisons" to match a sample to a suspect "in the absence of nuclear DNA," *id.*, at 161. It emphasized that courts failed meaningfully to test the reliability of such evidence. Instead, they "'routinely affirm[ed] admissibility'" of even "'the most vulnerable forensic sciences—hair microscopy, bite marks, and handwriting,'" relying on "'earlier decisions rather than facts established at a hearing.'" *Id.*, at 107.

Since the NAS Report, the scientific community has shored up some methods of forensic evidence and left others behind. For instance, a 2016 report to the President from his Council of Advisors on Science and Technology evaluated which of the methods critiqued in the NAS Report had, after further efforts by the scientific community, become "foundationally valid and reliable" enough for use in courts. Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods 67 (Sept. 2016) (PCAST Report). For instance, the PCAST Report concluded that "latent fingerprint analysis is a foundationally valid subjective methodology" based on two recent studies,

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[2] The scientific community's reevaluation of expert evidence is not limited to these types of forensic analysis. For example, there is now significant doubt in the medical community over the validity of "Shaken Baby Syndrome," or SBS, an expert diagnosis that formed the basis for convicting caregivers of murder when babies died suddenly under their care. See, *e.g.*, *Cavazos* v. *Smith*, 565 U. S. 1, 13 (2011) (Ginsburg, J., dissenting) (collecting studies questioning the validity of SBS in one such case). The National Registry of Exonerations includes over 30 cases where people convicted of murder, manslaughter, or child abuse based partially on evidence of SBS were later exonerated. See https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx.

but emphasized that such evidence in court had to be "accompanied by accurate information about limitations on the reliability of the conclusion." *Id.*, at 101; see *id.*, at 148–149. In contrast, it maintained that "bitemark analysis does not meet the scientific standards for foundational validity, and is far from meeting such standards." *Id.*, at 87, 148. The PCAST Report found the "prospects of developing bitemark analysis into a scientifically valid method to be low." *Id.*, at 87.

B

The facts of this petition illustrate some of the problems for courts evaluating this evolving landscape of forensic evidence. McCrory was convicted of killing his wife in 1985. The State's argument centered on the bitemark testimony of celebrity forensic odontologist Dr. Richard Souviron, who gained notoriety after his expert testimony helped secure Ted Bundy's conviction in 1979. Dr. Souviron testified that alleged bitemarks on the victim had been made at or about the time of death and were consistent with dental impressions taken from McCrory. The jury convicted.

In 2002, McCrory filed his first petition for state postconviction review based in part on the unreliability of the bitemark evidence. He cited a 2001 Newsweek article where Dr. Souviron had stated that "'You cannot make a positive ID from a bitemark.'" Brief in Opposition 10. The state court dismissed McCrory's petition and he did not appeal.

In 2020, 35 years after his trial, McCrory filed a second petition for state postconviction review. He argued that "[n]ewly discovered material facts," namely the scientific consensus rejecting bitemark evidence, entitled him to a new trial under Alabama's postconviction scheme. Ala. Rule Crim. Proc. 32.1(e) (2024). Dr. Souviron submitted an affidavit stating that "[u]nder today's scientific consensus

and the changes in the [American Board of Forensic Odontology] Guidelines, it would be unreliable and scientifically unsupported for me or any forensic odontologist to offer individualization testimony that Mr. McCrory was the source of the teeth marks, as I testified in 1985. I therefore fully recant my testimony that 'these teeth marks [were] made by Charles McCrory.'" 1 Record 38.

The state postconviction court held an evidentiary hearing. Two forensic dentists traveled to testify, without compensation, because they both once believed that bitemark evidence could be probative and now understood that it was not. Both experts testified that, based on today's scientific understanding, the victim's injury was "not a human bite mark." Tr. 34 (Apr. 28, 2021); *id.*, at 81. In response, the State introduced the trial transcript.

The court denied McCrory's petition for two reasons. First, the court reasoned that because Dr. Souviron complied with the standards in place at the time of the crime, investigation, and trial, the new testimony by forensic dentists could be construed as impeachment testimony. Second, the court held that there was enough circumstantial evidence of McCrory's guilt at trial outside of Dr. Souviron's testimony that the jury still would likely have convicted. The court included the mold of McCrory's teeth in this evidence, reasoning that the jury could have made the physical comparison from this mold to the mark on the victim's arm themselves.[3] The Alabama Court of Criminal Appeals affirmed.[4]

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[3] Alabama does not appear to defend the postconviction court's materiality analysis before this Court, instead pointing to other circumstantial evidence to support the outcome. Indeed, it is difficult to see how McCrory's dental impressions could have been introduced absent any expert testimony on bitemark analysis.

[4] The Alabama Court of Criminal Appeals granted McCrory's motion for rehearing after he raised the fact that Judge Kellum had authored the State's brief against him on direct appeal as assistant attorney general in 1986. Judge Kellum recused herself from the case on rehearing

McCrory has consistently maintained his innocence. He rejected the State's offer to plead to time served before the evidentiary hearing on the bitemark testimony. Now, McCrory asks this Court for relief.

II

In his petition for certiorari, McCrory argues that the expert bitemark testimony at his trial, now fully recanted and repudiated by the scientific community, rendered that trial unconstitutional. To the Alabama courts, however, McCrory argued primarily that Alabama law entitled him to relief under Alabama Rule of Criminal Procedure 32.1(e), which permits courts to vacate convictions based on "[n]ewly discovered material facts." His constitutional claim formed only a small part of his petition under Alabama law's separate provision that permits relief when the "[c]onstitution of the United States or of the State of Alabama requires a new trial." Rule 32.1(a). Both the trial court and the Alabama Court of Criminal Appeals summarily dismissed McCrory's constitutional claim. McCrory does not appear yet to have sought habeas review of his conviction in federal court. Even with a case like McCrory's, however, where the science underlying the expert evidence at his trial has been fully repudiated by the scientific community and fully recanted by the expert himself, ordinary state and federal avenues for postconviction relief can present significant barriers.

A

Many States have postconviction statutes like Alabama's that allow relief based on "[n]ewly discovered material facts." Rule 32.1(e). Typically, however, these statutes cover evidence that the defendant or his counsel could have but did not know about at the time of trial. For instance,

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and the court published an opinion identical to its previous one, except for noting her recusal.

Alabama's statute requires that "[t]he facts relied upon were not known by the petitioner or the petitioner's counsel at the time of trial or sentencing or in time to file a posttrial motion . . . or in time to be included in any previous collateral proceeding and could not have been discovered by any of those times through the exercise of reasonable diligence." Rule 32.1(e)(1). Of course, counsel would have no way of knowing that forensic evidence offered at the time of trial would be discredited decades later. Yet defendants convicted based on forensic evidence that has now been firmly discredited can still struggle to meet the requirements of such statutes in three ways.

First, because science evolves slowly rather than in conclusive bursts, it can be hard to pinpoint when someone should have "discovered [newly-discrediting evidence] through the exercise of reasonable diligence." *Ibid.* Unlike a murder weapon left in an abandoned warehouse, forensic science does not lie around waiting for sudden discovery. State postconviction schemes may also bar claims raised previously, even if the repudiation of the relevant science was in a more nascent stage. That can harm diligent defendants who may have had previous postconviction petitions denied when the expert testimony underlying their conviction had merely been called into question, but not yet conclusively repudiated by the scientific community. See A. Maxfield & N. Sanghvi, Junk Statute: How Post-Conviction Statutes Fail Petitioners Convicted Based on False or Misleading Forensic Evidence, 75 Rutgers L. Rev. 1343, 1356–1357 (2023) (detailing these challenges under Pennsylvania's postconviction review statute). For instance, McCrory filed a petition in 2002 based on a statement from Dr. Souviron in a 2001 Newsweek article several years before the NAS Report and well before the scientific consensus repudiating bitemark testimony.

Second, States may bar or discount new evidence that merely calls into question the probative value of evidence

presented at trial. In McCrory's case, both lower courts held that the new evidence "merely amount[ed] to impeachment evidence," Rule 32.1(e)(3); in other words, it would merely have given the jury reason to disbelieve the expert's evaluation of the evidence. Evidence that an entire mode of forensic analysis has no scientific basis, however, is of a different category from evidence that might call into question a witness's credibility or motive to testify. State postconviction statutes may not account for this difference.

Third, newly-discredited forensic evidence is different from other newly-discovered facts. Unlike a new witness to a murder or a new analysis of DNA evidence, the new evidence is simply a scientific consensus that the old evidence was unreliable. In McCrory's case, for example, it is not that the dental mold was not of McCrory's teeth or that the victim had no marks on her arm. It is simply that a modern scientist would be unable to testify that the two had anything to do with each other. State courts, however, sometimes decline to find that changed science is new evidence that requires a new trial. See J. Laurin, Criminal Law's Science Lag: How Criminal Justice Meets Changed Scientific Understanding, 93 Texas L. Rev. 1751, 1763–1764, and nn. 70–72 (2015) (collecting cases where state courts have held that changed science evidence is merely cumulative of other evidence or fails to point affirmatively to innocence).

Even when there is no question that the current scientific consensus would bar the admission of expert testimony in a trial today, state courts may still struggle to apply existing postconviction statutes to provide relief.

B

Modern trial courts have many tools to ensure the reliability of expert forensic testimony. See, *e.g.*, *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 509 U. S. 579 (1993); *Smith* v. *Arizona*, 602 U. S. ___ (2024). Many commenta-

tors, however, have emphasized the challenges in remedying defects in state convictions through federal postconviction review after the passage of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). See, *e.g.*, L. Kovarsky, Structural Change in State Postconviction Review, 93 Notre Dame L. Rev. 443, 461–465 (2017) (cataloging how AEDPA shifts primary responsibility for error correction from federal to state postconviction proceedings). AEDPA's overwhelming concern with the finality of criminal convictions sits uneasily with modern scientific developments that call those convictions into question.

Even beyond these structural barriers to federal postconviction review, prisoners may face substantive challenges with how to fit newly-discredited science into existing constitutional doctrines. See, *e.g.*, C. Plummer & I. Syed, Criminal Procedure v. Scientific Progress: The Challenging Path to Post-Conviction Relief in Cases That Arise During Periods of Shifts in Science, 41 Vt. L. Rev. 279, 287 (2016) (describing why someone whose conviction relied on discredited forensic testimony "may well be considered indisputably innocent by today's standards, but have no apparent legal avenue for relief"). McCrory's constitutional argument formed only a small part of his submissions to the Alabama courts and has yet to be passed on by a federal court. In this Court, he argues that a conviction "based on expert testimony that later is completely eliminated from the case" renders the underlying trial fundamentally unfair under the Due Process Clause. Pet. for Cert. 26. This Court has held that "a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment." *Napue* v. *Illinois*, 360 U. S. 264, 269 (1959); see also *Escobar* v. *Texas*, 598 U. S. ___ (2023) (vacating and remanding based on Texas's confession of error about a faulty crime laboratory). With newly-discredited expert evidence, however, nobody knew that the evidence was faulty at the time of the trial.

Similarly, it is hard to argue that trial counsel was ineffective for failing to object to science that was discredited only decades after the initial trial.

Of course, none of this prevents federal courts from holding that the lack of any direct evidence of a defendant's guilt aside from discredited expert testimony rendered a trial fundamentally unfair. See *Spencer* v. *Texas*, 385 U. S. 554, 563–564 (1967) ("[T]he Due Process Clause guarantees the fundamental elements of fairness in a criminal trial"); *Chambers* v. *Mississippi*, 410 U. S. 284, 302 (1973) (holding that "the exclusion of . . . critical evidence . . . denied [the defendant] a trial in accord with traditional and fundamental standards of due process"); see also, *e.g.*, *Han Tak Lee* v. *Houtzdale SCI*, 798 F. 3d 159, 169 (CA3 2015) (affirming grant of habeas relief after State failed to point to "'ample evidence'" sufficient to prove guilt beyond a reasonable doubt after excluding discredited fire-science evidence); *Gimenez* v. *Ochoa*, 821 F. 3d 1136, 1145 (CA9 2016) (recognizing "that habeas petitioners can allege a constitutional violation from the introduction of flawed expert testimony at trial if they show that the introduction of this evidence 'undermined the fundamental fairness of the entire trial'"). Although AEDPA review can be a backstop on the constitutional rights of criminal defendants, legislatures remain free to address this known flaw with decades-old convictions more directly.

III

Rather than waiting for this Court to address discredited forensic evidence testimony via constitutional law, Congress and state legislatures can more efficiently address this known problem in the first instance. Indeed, at least six States have already taken action.[5]

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[5] See Tex. Code Crim. Proc. Ann., Art. 11.073 (Vernon 2015); Cal. Penal Code Ann. §1473(e)(1) (West 2023); Conn. Gen. Stat. §52–582 (2018); Wyo. Stat. Ann. §7–12–402(a)(iv) (2018); Mich. Ct. Rule 6.502(G)(2)–(3)

Texas led the way in forensic science reform in criminal procedure. In 2013, Texas passed the first statute that allowed prisoners to challenge wrongful convictions by showing that changes in forensic science seriously undermined the integrity of their criminal trials. Article 11.073 applies to "relevant scientific evidence that . . . contradicts scientific evidence relied on by the state at trial." Art. 11.073(a)(2). If a court finds that such scientific evidence was not available at the time of the trial, would have been admissible, and, if presented at trial, "on the preponderance of the evidence" would have changed the outcome, it can grant relief. Art. 11.073(b)(2).

In 2018, the Texas Court of Criminal Appeals applied the new statute to bitemark evidence from Steven Chaney's 1987 murder trial. State experts at Chaney's trial had testified that a mark on one victim's arm was a "'match'" to Chaney. *Ex parte Chaney*, 563 S. W. 3d 239, 260. The court held that the "body of scientific knowledge underlying the field of bitemark comparisons has evolved since [Chaney's] trial in a way that contradicts the scientific evidence relied on by the State at trial." *Ibid.* "New peer-reviewed studies discredit[ed] nearly all the testimony" about the mark "being a 'match,'" and the American Board of Forensic Odontology "has completely disavowed individualization (i.e., that Chaney was a 'match'), which the State heavily relied upon at Chaney's trial." *Id.*, at 260–261. The court concluded that the bitemark evidence was the "linchpin of the State's case"; its "remaining evidence was circumstantial and weak." *Id.*, at 262. Chaney had therefore "shown by a preponderance of the evidence that he would not have been found guilty if the newly available and relevant scientific evidence he now relies upon had been presented at his 1987 trial." *Id.*, at 263.

California has followed a similar trajectory. In 2014, it

(2023); Nev. Rev. Stat. §34.930(3) (2019).

revised its postconviction statute's definition of "false evidence" to "includ[e] opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by the state of scientific knowledge or later scientific research or technological advances." Cal. Penal Code Ann. §1473(e)(1) (West 2023).[6] In 2016, the California Supreme Court applied the revised statute to bitemark testimony from William Richards' 1997 trial for the murder of his wife. The court had previously denied Richards' postconviction challenge based on the expert's recantation of his bitemark testimony under the then-extant "false evidence" statute. See *In re Richards*, 55 Cal. 4th 948, 289 P. 3d 860 (2012). Under the new definition in California's postconviction statute, however, the court concluded that the bitemark evidence was now "false evidence" that could form the basis of postconviction relief. *In re Richards*, 63 Cal. 4th 291, 311, 371 P. 3d 195, 209 (2016). Concluding that, "with the exception of the bite mark evidence, the defense had a substantial response to much of the prosecution's evidence" and it was therefore "reasonably probable that the false evidence presented by [the expert] at [Richards'] 1997 jury trial affected the outcome of that proceeding," the court granted Richards relief. *Id.*, at 315, 371 P. 3d, at 211.

These cases in Texas and California show how targeted legislative reform can allow courts to address convictions based on trial evidence that has been repudiated by the scientific community. Legislators enabled these courts explicitly to consider changes in forensic science on collateral review of criminal convictions. "The adoption of these changed science writs empowers courts in state habeas proceedings to reverse wrongful convictions, rather than be hindered by procedure." V. Beety, Changed Science Writs

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[6] This provision is now codified elsewhere in section §1473. See Cal. Penal Code Ann. §1473(b)(2) (West 2024).

and State Habeas Relief, 57 Hous. L. Rev. 483, 531 (2020). As a result, innocent people can attain freedom sooner.

* * *

I vote to deny this petition because the constitutional question McCrory raises has not yet percolated sufficiently in the lower courts to merit this Court's review. There is no reason, however, for state legislatures or Congress to wait for this Court before addressing wrongful convictions that rest on repudiated forensic testimony.

SUPREME COURT OF THE UNITED STATES

WARREN KING *v.* SHAWN EMMONS, WARDEN

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

No. 23–668. Decided July 2, 2024

The petition for a writ of certiorari is denied.

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

Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), federal habeas courts must give substantial deference to factual determinations made by state courts. See 28 U. S. C. §§2254(d)(2), (e)(1). But deference is not a rubber stamp; it "does not imply abandonment or abdication of judicial review." *Miller-El* v. *Cockrell*, 537 U. S. 322, 340 (2003). "A federal court can disagree with a state court's [factual findings] and, when guided by AEDPA, conclude the decision was unreasonable or that the factual premise was incorrect by clear and convincing evidence." *Ibid.*

In this capital case, a Georgia prosecutor struck every Black woman and all but two Black men from a jury pool during *voir dire*. Responding to a challenge from the defendant based on *Batson* v. *Kentucky*, 476 U. S. 79 (1986), the prosecutor protested, arguing that it was "improper" for the court to inquire into his reasons for making the strikes. 4 App. in No. 20–12804 (CA11), p. 7. He then proceeded to explain that one of his "main reason[s]" for a specific strike was that "this lady is a black female." *Id.*, at 9.

The trial court determined that this racially discriminatory strike violated *Batson*. In response, the prosecutor erupted into a rant against *Batson*. He repeatedly asserted that it was "improper for this [c]ourt to tell me . . . that's not a justifiable strike." *Id.*, at 43. And he concluded: "I take

issue with this entire whole process . . . . It's improper and it's wrong." *Id.*, at 44.

On appeal, the Supreme Court of Georgia found that none of the prosecutor's other peremptory strikes were racially discriminatory—but nowhere did that court acknowledge the fact that one of the prosecutor's strikes *was* explicitly discriminatory, nor did the court even mention the prosecutor's drawn-out rants against *Batson*. The Eleventh Circuit then proceeded on federal habeas review to conclude that the state court did not make "an unreasonable determination of the facts" under §2254(d)(2), despite its having completely ignored those highly salient facts.

That was error. The deference that AEDPA requires is not boundless, and when a state court fails to engage with critical evidence in rendering its factual findings, a federal habeas court should not hesitate to deem those findings unreasonable. Because I would summarily reverse the Eleventh Circuit's contrary decision, I respectfully dissent.

I

Petitioner Warren King was charged with malice murder and other crimes for his involvement in the killing of a convenience store employee in the course of a robbery. During jury selection for King's trial, the prosecutor, Assistant District Attorney John Johnson, used 7 of his 10 allotted peremptory challenges to strike every Black woman and all but two Black men. As a result of these strikes, Johnson struck 87.5% of the qualified Black jurors but only 8.8% of the qualified White jurors. Statistically speaking, this meant that Black jurors were about 10 times more likely to be struck than White jurors. The resulting jury consisted of seven White men, four White women, and one Black man.

The defense challenged Johnson's strikes as discriminatory in violation of *Batson*.[1] The trial court determined that

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[1] Under this Court's decision in *Batson* v. *Kentucky*, 476 U. S. 79

a prima facie case of discrimination had been made and directed Johnson to explain his strikes, as *Batson* requires. Before complying, however, Johnson made his objection to *Batson* clear in a lengthy speech that included the following assertions:

> "I object to the [c]ourt's finding based on the fact that it's simply on statistical analysis that the State struck eight blacks and three whites, and that has no rational basis to whether a *prima facie* case of discrimination has been established in this particular case. I state that for the record. I know the [c]ourt's ruling, and I know the issue that has been decided by the Supreme Court of Georgia. I do state for the record that the Supreme Court of Georgia of course does not know how I strike, and that it is improper for them to involve themselves in this unless defense counsel can point to a specific reason why some particular juror was qualified to serve and that I struck them. . . . [S]tatistics can never make a *prima facie* showing. The Supreme Court of Georgia has said that it does, and I just take exception to that, and I do so for the record." 4 App. in No. 20–12804, at 6–7.

Johnson capped off his objection by asserting his view that a *Batson*-type analysis "becomes very unwieldy, and that's why neither this Court nor the Supreme Court nor the defense should be involved in deciding whether or not the State has accurately or effectively performed its strikes." *Id.*, at 8. But then he proceeded to offer reasons

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(1986), analyzing a claim involving an allegedly discriminatory strike follows a three-step process. First, the defendant must establish "a prima facie case" that the circumstances of the strike "giv[e] rise to an inference of discriminatory purpose." *Id.*, at 93–94. Second, "the burden shifts to the [prosecution] to explain adequately the racial exclusion." *Id.*, at 94. Third and finally, the trial court must determine whether "the defendant has established purposeful discrimination." *Id.*, at 98.

for the particular strikes he had made in this case. The trial court accepted those explanations until Johnson reached prospective juror Jacqueline Alderman, a Black woman. Johnson explained, "My main reason [for the strike] is that this lady is a black female, she is from Surrency, [and] she knows the defendant and his family." *Id.*, at 9. The trial court, however, noted that Alderman had testified that she did not know King or his family. The trial court accordingly found that the strike violated *Batson* and ordered Alderman seated on the jury.

Johnson then made a second oral statement protesting against *Batson*. As before, Johnson's tirade is too long to reproduce fully here, but the following excerpt is emblematic of the position he forcefully maintained:

> "If this lady were a white lady there would not be a reason—there would not be a question in this case. And that's the problem I have with all of this is that it's not racially neutral. There was a time when it was racially neutral and that was before *Batson*. Because I had to act that way when I was in Brunswick because it was a physical impossibility if you wanted to strike every black off a jury for you to do that. And we had an issue just—you had to reform your whole ideas and then *Batson* came out. And *Batson* now makes us look whether people are black or not. Not whether they're black or white, but black or not." *Id.*, at 43–44.

Johnson concluded by emphasizing that, in his view, "it [was] uncalled for to require people to be reseated on a jury that [he] ha[d] a problem with in this case." *Id.*, at 44.

After his speech concluded, Johnson emphasized that he was "very angry right now," *ibid.*, but suggested that the trial court place Alderman on the jury while leaving his other strikes untouched. The trial court and King's attorneys eventually accepted this compromise, and the court did not revisit its prior conclusions regarding Johnson's

other strikes. The newly empaneled jury, consisting of 10 White and 2 Black jurors, ultimately convicted King on all charges and sentenced him to death.

On appeal, the Supreme Court of Georgia affirmed King's conviction and sentence. *King* v. *State*, 273 Ga. 258, 539 S. E. 2d 783 (2000). The state court did not, however, even mention Johnson's repeated, indignant diatribes against *Batson*. Nor did it recognize that Johnson's reason for striking Alderman was explicitly based on race, obliquely referring to that strike only to say that "[t]he trial court found the State's reason for striking juror Alderman to be insufficient to rebut the prima facie showing of discrimination." 273 Ga., at 268, 539 S. E. 2d, at 795.

King filed a petition for habeas corpus in federal court, again pressing his *Batson* claim. The District Court denied relief, and a divided panel of the Eleventh Circuit affirmed. *King* v. *Warden, Ga. Diagnostic Prison*, 69 F. 4th 856 (2023). The court acknowledged that King's case "presents a troubling record and a prosecutor who exercised one racially discriminatory strike and ranted against precedents of the Supreme Court of the United States." *Id.*, at 868. It concluded, however, that the state court's findings were not unreasonable under AEDPA. Judge Wilson dissented. In his view, "even deferentially reviewing the Supreme Court of Georgia's opinion, no reasonable jurist could have reviewed this record—replete with evidence of racial discrimination—and not found a *Batson* violation." *Id.*, at 881.

II

A

Under AEDPA, a federal court may not grant habeas relief to a state prisoner based on a state court's factual findings "unless the adjudication of the claim . . . resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State

court proceeding." §2254(d)(2). "A determination of a factual issue made by a State court shall be presumed to be correct"; this "presumption of correctness" must be "rebutt[ed] . . . by clear and convincing evidence." §2254(e)(1). Only after a state court's factual determination is found to be unreasonable can a federal court then assess the merits of a habeas petitioner's claim "without the deference AEDPA otherwise requires." *Panetti* v. *Quarterman*, 551 U. S. 930, 953 (2007). Clearly, this standard incorporates a significant amount of deference to a state court's prior factual findings. "A state-court factual determination is not unreasonable merely because the federal court would have reached a different conclusion in the first instance." *Wood* v. *Allen*, 558 U. S. 290, 301 (2010).

Equally clear, however, is that "[e]ven in the context of federal habeas, deference does not imply abandonment or abdication of judicial review, and does not by definition preclude relief." *Brumfield* v. *Cain*, 576 U. S. 305, 314 (2015) (internal quotation marks omitted). Put another way, AEDPA's "standard is demanding but not insatiable." *Miller-El* v. *Dretke*, 545 U. S. 231, 240 (2005).

For that reason, this Court has not hesitated to find AEDPA's standard satisfied when a state court's factfinding process disregards information that is highly relevant to a court's factual determination. See, *e.g.*, *Brumfield*, 576 U. S., at 314–316; *Wiggins* v. *Smith*, 539 U. S. 510, 528 (2003); *Dretke*, 545 U. S., at 265–266; see also 2 R. Hertz & J. Liebman, Federal Habeas Corpus Practice and Procedure §32.4, p. 2002, and n. 12 (7th ed. 2023) (collecting lower court cases in which "[t]he state court . . . overlooked or misconstrued evidence"). To be sure, "a state court need not make detailed findings addressing all the evidence before it." *Cockrell*, 537 U. S., at 347. But a state court's disregard for highly salient facts casts serious doubt on the reasonableness of the state court's determination.

B

The Georgia Supreme Court's blinkered assessment of each of prosecutor Johnson's strikes—divorced from context—ignored highly relevant facts and circumstances in three critical areas, each of which should have informed the Eleventh Circuit's AEDPA determination.

First, the Georgia Supreme Court ignored the flagrant nature of the *Batson* violation the trial court had already recognized—the discriminatory strike of Jacqueline Alderman. In the state court's telling, this earlier violation was simply one for which the prosecution's "reason for striking juror Alderman" was "insufficient to rebut the prima facie showing of discrimination." *King*, 273 Ga., at 268, 539 S. E. 2d, at 795. But that sugarcoated version of events failed to acknowledge that one of Johnson's "main reason[s]" for the strike was that Alderman "is a black female," 4 App. in No. 20–12804, at 9, and that Johnson's nonracial reason for the strike—that Alderman knew King and his family—was in fact false, as the trial court found. We have emphasized that "historical evidence of the State's discriminatory peremptory strikes from past trials" are highly probative of a prosecutor's discriminatory intent. *Flowers* v. *Mississippi*, 588 U. S. 284, 304 (2019); see also *Dretke*, 545 U. S., at 253–254. All the more, then, when—as in this case—a discriminatory strike had occurred earlier *during the same trial*.

Second, the Georgia Supreme Court said absolutely nothing about Johnson's multiple heated outbursts, all of which made his hostility to *Batson* patently obvious. This Court has recognized that "'the best evidence of discriminatory intent often will be the demeanor of the attorney who exercises the challenge.'" *Flowers*, 588 U. S., at 302–303 (quoting *Snyder* v. *Louisiana*, 552 U. S. 472, 477 (2008)). Here, that demeanor provided highly probative evidence that Johnson's use of peremptory strikes was suspect. Johnson repeatedly made clear that he disagreed with this Court's decision in *Batson* and believed that courts had no business

inquiring into the reasons for his strikes. As the dissent below noted, Johnson's outbursts "demonstrated, at a minimum, that he was reluctant to abide by the requirements of *Batson*." 69 F. 4th, at 882 (opinion of Wilson, J.).

Third, racial disparities in a prosecutor's exercise of peremptory strikes are highly probative of discriminatory intent, and here, "[t]he numbers speak loudly." *Flowers*, 588 U. S., at 305. Again, Johnson struck 87.5% of the qualified Black jurors while striking only 8.8% of the qualified White jurors. In a prior case, we have described this kind of disparity—there, the striking of 10 out of 11 Black jurors—as "remarkable." *Dretke*, 545 U. S., at 240–241. With such stark numbers, "[h]appenstance is unlikely." *Cockrell*, 537 U. S., at 342. This fact, too, does not appear anywhere in the Georgia Supreme Court's opinion.

The Eleventh Circuit should have been attentive to the fact that the Georgia Supreme Court's *Batson* determination exhibited such critical flaws born out of its abject failure to grapple with what actually happened at trial. The state court's watered-down description of Johnson's initial *Batson* violation should have raised alarm bells as the Circuit evaluated the reasonableness of the state court's factual findings under AEDPA. The Court of Appeals also should have had grave doubts about the reasonableness of the state court's factual findings due to its failure to acknowledge the prosecutor's pertinent and disturbing anti-*Batson* rants. And the stark statistical evidence of the prosecutor's discriminatory strike behavior—again, unmentioned by the State Supreme Court—should have served as further confirmation that AEDPA deference to that court's factual findings was not warranted.

In short, the Eleventh Circuit failed to faithfully apply AEDPA's review standard here. Given that the Georgia Supreme Court did not address, or even mention, the prosecutor's expressed antipathy toward *Batson*, the Eleventh Circuit should have deemed AEDPA's unreasonable-

determination standard satisfied and proceeded to review the merits of King's claim without the deference that AEDPA usually requires. See *Panetti*, 551 U. S., at 953. Such a nondeferential review of the strikes at issue here might well have made a difference—as Judge Wilson noted in dissent, there is good reason to believe that King's *Batson* claim would otherwise have prevailed.[2] But the Court of Appeals reflexively deferred to the Georgia Supreme Court, notwithstanding glaring flaws in the state court's factual findings. Even under AEDPA's deferential standard, federal courts play an important role in "'guard[ing] against extreme malfunctions in the state criminal justice systems.'" *Harrington* v. *Richter*, 562 U. S. 86, 102 (2011). The Eleventh Circuit's failure to do so here is deeply unfortunate, and it reflects a neglectful response to the apparent trend of disturbingly lax *Batson* enforcement on the part of Georgia's high court.[3]

* * *

Batson's third step requires courts to consider a prosecu-

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[2] Even setting aside the highly relevant evidence that the Georgia Supreme Court ignored, there is ample evidence that the state court's analysis of each of these strikes was flawed. "[O]f the potential jurors who knew of King or his family, only black potential jurors were struck," even though "[t]hree white potential jurors . . . discussed their familiarity with King or his family." *King* v. *Warden, Ga. Diagnostic Prison*, 69 F. 4th 856, 884 (2023) (Wilson, J., dissenting). And Johnson's other "proffered neutral reasons for striking black jurors"—such as views about the death penalty or involvement in church—"are not supported by the record." *Id.*, at 884–885.

[3] We are told that, since this Court decided *Batson* in 1986, the Georgia Supreme Court has found a prosecutor's strikes to violate *Batson* only five times, despite having considered the issue in 127 published opinions, and it has not found a *Batson* violation for the past 27 years (since 1997). Brief for Georgia Association of Criminal Defense Lawyers as *Amicus Curiae* 6. In 12 of the cases in which it reviewed *Batson* challenges, the court upheld the prosecution's decision to strike every single Black juror. *Id.*, at 6–7.

tor's "strike in the context of all the facts and circumstances." *Flowers*, 588 U. S., at 315. Here, the Georgia Supreme Court ignored highly salient facts about the prosecutor's admittedly discriminatory strike behavior and antipathy toward the legal standards that address such conduct. Instead, the state court made a narrow assessment of the prosecutor's strikes that lacked important context. Therefore, the state court's denial of King's *Batson* claim was "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." §2254(d)(2). Accordingly, I would summarily reverse the Court of Appeals' erroneous application of deference in upholding the state court's decision and remand for reconsideration of King's *Batson* claim "without the deference AEDPA otherwise requires." *Panetti*, 551 U. S., at 953.

SUPREME COURT OF THE UNITED STATES

ALLSTATES REFRACTORY CONTRACTORS, LLC *v.*
JULIE A. SU, ACTING SECRETARY OF LABOR, ET AL.

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

No. 23–819. Decided July 2, 2024

The petition for a writ of certiorari is denied. JUSTICE GORSUCH would grant the petition for a writ of certiorari.

JUSTICE THOMAS, dissenting from the denial of certiorari.

Congress gave the Occupational Safety and Health Administration the power to enact and enforce any workplace-safety standard that it deems "reasonably necessary or appropriate." 29 U. S. C. §§652(8), 655(b). This petition asks us to consider whether that grant of authority is an unconstitutional delegation of legislative power. Because the standard this Court currently applies to determine whether Congress has impermissibly delegated legislative power "largely abdicates our duty to enforce that prohibition," I would grant the petition. *Department of Transportation* v. *Association of American Railroads*, 575 U. S. 43, 77 (2015) (THOMAS, J., concurring in judgment).

The Constitution vests "[a]ll legislative Powers herein granted . . . in a Congress of the United States." Art. I, §1. And, "[w]e have held that the Constitution categorically forbids Congress to delegate its legislative power to any other body," including to an administrative agency. *Association of American Railroads*, 575 U. S., at 77 (opinion of THOMAS, J.); see also *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 472 (2001). But, under our precedents, a delegation of authority is constitutional so long as the relevant statute sets out an "'intelligible principle'" to guide the agency's exercise of authority. *Id.*, at 472. The Court of

Appeals for the Sixth Circuit upheld the delegation of authority to the Occupational Safety and Health Administration under this "intelligible principle" test, over Judge Nalbandian's dissent. 79 F. 4th 755, 760 (2023).

I continue to adhere to my view that the intelligible principle test "does not adequately reinforce the Constitution's allocation of legislative power." *Association of American Railroads*, 575 U. S., at 77 (opinion of THOMAS, J.); see also *Gundy* v. *United States*, 588 U. S. 128, 164 (2019) (GORSUCH, J., dissenting) (explaining that our current intelligible principle test "has no basis in the original meaning of the Constitution, in history, or even in [our precedents]"). This case exemplifies the problem. Congress purported to empower an administrative agency to impose whatever workplace-safety standards it deems "appropriate." That power extends to virtually every business in the United States. See §654(a)(2); §652(5) (defining the regulated "employer[s]" as any "person engaged in a business affecting commerce who has employees"). The agency claims authority to regulate everything from a power lawnmower's design, 29 CFR §1910.243(e) (2023), to the level of "contact between trainers and whales at SeaWorld," *SeaWorld of Florida, LLC* v. *Perez*, 748 F. 3d 1202, 1220 (CADC 2014) (Kavanaugh, J., dissenting).

The Occupational Safety and Health Act may be the broadest delegation of power to an administrative agency found in the United States Code. See C. Sunstein, Is OSHA Unconstitutional? 94 Va. L. Rev. 1407, 1448 (2008) ("No other federal regulatory statute confers so much discretion on federal administrators, at least in any area with such broad scope"). If this far-reaching grant of authority does not impermissibly confer legislative power on an agency, it is hard to imagine what would. It would be no less objectionable if Congress gave the Internal Revenue Service authority to impose any tax on a particular person that it deems "appropriate," and I doubt any jurist would sustain

such a delegation.

The question whether the Occupational Health and Safety Administration's broad authority is consistent with our constitutional structure is undeniably important. At least five Justices have already expressed an interest in reconsidering this Court's approach to Congress's delegations of legislative power. See *Paul* v. *United States*, 589 U. S. ___, ___ (2019) (statement of KAVANAUGH, J., respecting denial of certiorari) (slip op., at 2); *Gundy*, 588 U. S., at 149 (ALITO, J., concurring in judgment); *id.*, at 164 (GORSUCH, J., joined by ROBERTS, C. J., and THOMAS, J., dissenting). Because this petition is an excellent vehicle to do exactly that, I would grant review.

SUPREME COURT OF THE UNITED STATES

LONNIE ALLEN BASSETT *v.* ARIZONA

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

No. 23–830. Decided July 2, 2024

The petition for a writ of certiorari is denied.

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

"[M]andatory life-without-parole sentences for juveniles violate the Eighth Amendment." *Miller* v. *Alabama*, 567 U. S. 460, 470 (2012). Sentencing courts therefore must have "discretion to impose a lesser punishment" on children who commit crimes before they turn 18. *Jones* v. *Mississippi*, 593 U. S. 98, 100 (2021). An Arizona court sentenced Lonnie Allen Bassett to life without parole for a crime he committed as a juvenile. At the time Bassett was sentenced, however, Arizona courts had no discretion to impose parole-eligible sentences because the State had completely abolished parole for people convicted of felonies.

The Arizona Supreme Court acknowledged that "Bassett was actually ineligible for parole." *State ex rel. Mitchell* v. *Cooper*, 256 Ariz. 1, ___, 535 P. 3d 3, 8 (2023). Arizona also agrees that "parole-eligibility is constitutionally required," and that "Arizona law did not provide a parole eligible option at the time of Bassett's sentencing." Brief in Opposition 1, 24. Nevertheless, the Arizona Supreme Court denied Bassett's petition for postconviction relief.

This Court's precedents require a "discretionary sentencing procedure—where the sentencer can consider the defendant's youth and has discretion to impose a lesser sentence than life without parole." *Jones*, 593 U. S., at 112. Because Arizona's sentencing scheme instead mandated

life without parole for juveniles, I would grant the petition for certiorari and summarily reverse the judgment below.

I

In 2004, Lonnie Bassett shot and killed two people in Arizona when he was 16. He was riding in the back seat of a car driven by Frances Tapia when he used a shotgun to shoot Tapia and her boyfriend, who was sitting in the passenger seat.

Bassett was convicted of two counts of first-degree murder. At the time he was sentenced, defendants convicted of first-degree murder in Arizona received one of two sentences: either (1) "natural life," under which the defendant was "not eligible for commutation, parole, . . . or release from confinement on any basis;" or (2) "life," which required a defendant to serve 25 years before "releas[e] on any basis." Ariz. Rev. Stat. Ann., §13–703(A) (2003); see §§13–703.01(A), 13–1105(C). Arizona abolished parole for people with felony convictions in 1994, however, and that remained the law until 2014. See §41–1604.09(I) (1994); §13–716 (2014); §41–1604.09(I)(2) (1994). Therefore, for people with first-degree murder convictions, "the only 'release' available under Arizona law [wa]s executive clemency, not parole." *Cruz* v. *Arizona*, 598 U. S. 17, 23 (2023). Although Arizona's sentencing statute "continued to list two alternatives to death," *id.*, at 21, the "only alternative sentence to death was life imprisonment without parole," *Lynch* v. *Arizona*, 578 U. S. 613, 614 (2016) (*per curiam*); see also *Miller*, 567 U. S., at 486 (listing Arizona as one of "29 jurisdictions mandating life without parole for children").

Bassett was sentenced in 2006. The trial court sentenced him to one "natural life" sentence on one count and a consecutive "life" sentence on the other count. Because Bassett was sentenced between 1994 and 2014, the trial judge could sentence him only to life without parole.

II

Life-without-parole sentences for juveniles are constitutional only for "those whose crimes reflect permanent incorrigibility" rather than "transient immaturity." *Montgomery* v. *Louisiana*, 577 U. S. 190, 209 (2016). Thus, "an individual who commits a homicide when he or she is under 18 may be sentenced to life without parole, but only if the sentence is not mandatory and the sentencer therefore has discretion to impose a lesser punishment." *Jones*, 593 U. S., at 100. This "discretionary sentencing procedure" is one "where the sentencer can consider the defendant's youth and has discretion to impose a lesser sentence than life without parole." *Id.*, at 112.

Discretionary sentencing schemes "ensure that life-without-parole sentences are imposed only in cases where that sentence is appropriate in light of the defendant's age." *Id.*, at 111–112. This constitutionally required sentencing scheme reflects the premise that, in deciding whether to impose life-without-parole for a juvenile, consideration of "youth" and "a child's capacity for change" matter. *Miller*, 567 U. S., at 473. This Court has reaffirmed that "*Miller* required a discretionary sentencing procedure." *Jones*, 593 U. S., at 110. Thus, "a State's discretionary sentencing system" is "constitutionally necessary." *Id.*, at 105.

III

Arizona's sentencing scheme left no discretion for a parole-eligible sentence in this case. No one disputes that. See Brief in Opposition 1 ("Arizona law did not provide a parole-eligible option at the time of Bassett's sentencing in 2006"); 256 Ariz., at ___, 535 P. 3d, at 8 ("Bassett was actually ineligible for parole"). That is plainly inconsistent with *Miller*, *Montgomery*, and *Jones*. The State does "*not* argu[e] that the mere existence of its two sentencing options saves it from a *Miller* violation," and it agrees "parole-eligibility is constitutionally required." Brief in Opposition 22, 24.

Arizona advances three arguments for why Bassett did, in fact, receive all the discretionary process required by *Miller*. These arguments formed the basis for the Arizona Supreme Court's decision below.[1] Each runs contrary to *Miller*'s clear command.

First, the State contends that the sentencing court "was so mistaken about its own sentencing statutes that it fortuitously complied with *Miller*" because of a "widespread mistaken belief among Arizona judges and attorneys that the release-eligible option included parole eligibility." Brief in Opposition 3, 27. To start, Arizona eliminated parole more than a decade before Bassett was sentenced, and this argument is "inconsistent with the presumption that state courts know and follow the law." *Woodford* v. *Visciotti*, 537 U. S. 19, 24 (2002) (*per curiam*). Indeed, Arizona courts recognized that state law "eliminat[ed] the possibility of parole for crimes committed after [1993]," *State* v. *Rosario*, 195 Ariz. 264, 268, 987 P. 2d 226, 230 (App. 1999); and the State itself represented, in this Court and other courts, that state law made life without parole the minimum sentence. See Brief for State of Michigan et al. as *Amici Curiae* in *Miller* v. *Alabama*, O. T. 2011, No. 10–9646, etc., pp. i, 1; see also, *e.g.*, State Motion To Dismiss in *Chaparro* v. *Ryan*, No. 2:19–cv–00650 (D Ariz., Mar. 27, 2019), p. 3 (arguing that "Arizona statutory law at all relevant times unambiguously

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[1] The State does not argue, nor did the Arizona Supreme Court clearly hold, that executive clemency qualifies as the equivalent of a parole-eligible sentence under *Miller*. See Brief in Opposition 22–23 (conceding that "clemency-eligibility alone would have been insufficient"). That is for good reason. Executive clemency provides no "meaningful" or "realistic opportunity to obtain release." *Graham* v. *Florida*, 560 U. S. 48, 79, 82 (2010). Indeed, "*amici* who track clemency proceedings in Arizona are not aware of a single instance in which an individual convicted of first-degree murder since Arizona eliminated parole in 1994 has received a grant of executive clemency (*i.e.*, commutation of sentence or pardon)." Brief for National Association of Criminal Defense Lawyers et al. as *Amici Curiae* on Pet. for Cert. 8.

forbade parole to anyone convicted of first-degree murder after 1993"); Reply Brief 5–6 (collecting examples). This argument requires speculating, based on no evidence, about the possibility of a judge's two-decade-old mistaken belief about state law. *Miller* permits no such thing. Instead, as this Court has recently confirmed, "*Miller* required a discretionary sentencing procedure." *Jones*, 593 U. S., at 110. Here, it is undisputed that Arizona's sentencing regime required a sentence of life without parole at the time Bassett was sentenced.

Second, the State contends that Bassett did, in fact, receive "an individualized sentencing hearing at which his youth and attendant characteristics were considered" as mitigation evidence. Brief in Opposition 14; see also 245 Ariz., at ___–___, 535 P. 3d, at 11–13 (noting that "Bassett's chronological age and attendant characteristics were considered"). That too misunderstands this Court's precedents. Sentencing courts must have the authority to actually "impose a lesser sentence than life without parole," not just the discretion to consider youth as a mitigating factor. *Jones*, 593 U. S., at 112. In other words, juvenile defendants can be sentenced to life without parole "only so long as the sentence is not mandatory—that is, only so long as the sentencer has discretion to 'consider the mitigating qualities of youth' and impose a lesser punishment." *Id.*, at 106 (quoting *Miller*, 567 U. S., at 476).

When a State offers no possible penalty other than life without parole, the sentence is unconstitutionally mandatory because consideration of age "could not change the sentence; whatever [is] said in mitigation, the mandatory life-without-parole prison term would kick in." *Id.*, at 488. Here, for example, although the judge mentioned Bassett's age as a mitigating factor, it is clear that the judge could not have considered how "the distinctive attributes of youth diminish the penological justifications for imposing the

harshest sentenc[e]" of life without parole. *Id.*, at 472. Because Bassett was sentenced well before *Miller*, the sentencing court could not have adequately considered Bassett's youth, his capacity for rehabilitation, or the necessity of a parole-eligible sentence.

"*Miller*'s discretionary sentencing procedure has resulted in numerous sentences less than life without parole for defendants who otherwise would have received mandatory life-without parole sentences." *Jones*, 593 U. S., at 119. That is because, "in concluding that a discretionary sentencing procedure would help make life-without-parole sentences relatively rare, the Court relied on data, not speculation." *Id.*, at 112. Arizona asks this Court to speculate that some consideration of age as a mitigating factor is sufficient to satisfy *Miller*, *Montgomery*, and *Jones*. Perhaps Bassett would have received the same parole-ineligible sentences for the same reasons the sentencing judge already discussed; or perhaps Bassett's horrific childhood, including the fact that he was abandoned by his mother, kidnapped and abused by his father, and kept in a closet with just one meal a day, would have led to a parole-eligible sentence. This Court should not speculate on this cold record, though, because "[d]etermining the proper sentence in such a case raises profound questions of morality and social policy" that are best left to "state sentencing judges and juries." *Jones*, 593 U. S., at 119–120. Instead, this Court's role is to ensure that the trial judge had "discretion to impose a lesser punishment in light of [Bassett's] youth." *Id.*, at 120.

Third, the State contends that "the juveniles who received parole-eligible sentences will all receive parole eligibility within 25 years by virtue of the 2014 legislative fix," so the "functional outcome is no different than if parole-eligibility had been on the books all along." Brief in Opposition 21; see also 256 Ariz., at ___–___, 535 P. 3d, at 12–13. That is wrong. To start, the 2014 reinstatement of parole only applies to juveniles serving "life" sentences, not those

serving "natural life" sentences.[2] So in this case, for example, it applies to only one of Bassett's two sentences. See Brief for 15 Constitutional and Criminal Law Professors as *Amici Curiae* on Pet. for Cert. 10 (Law Professors Brief) ("[T]he legislature did nothing to make individuals like Petitioner Bassett, who were sentenced to natural life with no possibility of release, parole-eligible").[3]

Moreover, the relevant question is the constitutionality of the sentencing scheme at the time of sentencing; and here the court lacked discretion to impose a sentence less than life without parole when it sentenced Bassett. Courts generally have "no authority to leave in place a conviction or sentence that violates a substantive rule," and there is "no grandfather clause that permits States to enforce punishments the Constitution forbids." *Montgomery*, 577 U. S., at 203–204. Therefore, "any post hoc revision to the sentencing scheme does nothing to alter the lack of discretion that judges faced when Petitioner Bassett and similarly situated defendants were sentenced. Their sentences remain unconstitutional." Law Professors Brief 10. That is why this Court has already rejected the idea that "the potential for future 'legislative reform'" can rescue an unconstitutional sentencing scheme. *Lynch*, 578 U. S., at 616.

* * *

In *Jones*, this Court assumed that "most offenders who could seek collateral review as a result of *Montgomery* have done so and, if eligible, have received new discretionary sentences under *Miller*." *Jones*, 593 U. S., at 111, n. 4. That is simply not true in Arizona. "Dozens of juvenile offenders in

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[2] "[A] person who is sentenced to life imprisonment with the possibility of release after serving a minimum number of calendar years for an offense that was committed before the person attained eighteen years of age is eligible for parole on completion of service of the minimum sentence." Ariz. Rev. Stat. Ann. §13–716 (2014).

[3] Arizona does "*not* argu[e] that the mere existence of its two sentencing options saves it from a *Miller* violation." Brief in Opposition 22.

Arizona . . . were sentenced to life imprisonment without the opportunity for any type of release for crimes they committed as teenagers." Brief for National Association of Criminal Defense Lawyers et al. as *Amici Curiae* on Pet. for Cert. 3. *Miller* identified 28 States that had mandatory life-without-parole sentences for juveniles, including Arizona. Arizona "remains *the only one* of those states that has neither made individuals like Petitioner Bassett eligible for parole nor allowed them to be resentenced under a constitutional scheme." Law Professors Brief 18–19.[4] "Arizona thus remains the only state where juvenile homicide defendants are still serving unconstitutional sentences of mandatory life without parole with no meaningful mechanism to challenge their sentences." *Id.*, at 21.

Arizona now concedes that "[b]ut for the sentencer's actual consideration of parole-eligibility and the subsequent statute effectuating this sentence, there would be a *Miller* violation." Brief in Opposition 23. For the reasons discussed above, those two features do not save Arizona's scheme. Because the Arizona Supreme Court's decision departed from this Court's established precedents, I would grant the petition for certiorari and summarily reverse the judgment below.

I respectfully dissent.

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[4] "Following *Miller*, all other twenty-seven states called out in the decision have taken meaningful action to comply with federal constitutional law. Sixteen of those states have banned juvenile life without parole entirely. Six others have passed legislative reforms that remedy unconstitutional pre-*Miller* juvenile sentences. The remaining five states have addressed unconstitutional pre-*Miller* sentences via their state courts." Law Professors Brief 19–21 (footnotes omitted) (collecting cases).

SUPREME COURT OF THE UNITED STATES

JOHN DOE, THROUGH NEXT FRIEND JANE ROE *v.* SNAP, INC., DBA SNAPCHAT, L.L.C., DBA SNAP, L.L.C.

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

No. 23–961. Decided July 2, 2024

The petition for a writ of certiorari is denied.

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

When petitioner John Doe was 15 years old, his science teacher groomed him for a sexual relationship. The abuse was exposed after Doe overdosed on prescription drugs provided by the teacher. The teacher initially seduced Doe by sending him explicit content on Snapchat, a social-media platform built around the feature of ephemeral, self-deleting messages. Snapchat is popular among teenagers. And, because messages sent on the platform are self-deleting, it is popular among sexual predators as well. Doe sued Snapchat for, among other things, negligent design under Texas law. He alleged that the platform's design encourages minors to lie about their age to access the platform, and enables adults to prey upon them through the self-deleting message feature. See Pet. for Cert. 14–15. The courts below concluded that §230 of the Communications Decency Act of 1996 bars Doe's claims. 47 U. S. C. §230. The Court of Appeals denied rehearing en banc over the dissent of Judge Elrod, joined by six other judges. 88 F. 4th 1069 (2023).

The Court declines to grant Doe's petition for certiorari. In doing so, the Court chooses not to address whether social-media platforms—some of the largest and most powerful companies in the world—can be held responsible for their own misconduct. Section 230 of the Communications

Decency Act states that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." §230(c)(1). In other words, a social-media platform is not legally responsible as a publisher or speaker for its users' content.

Notwithstanding the statute's narrow focus, lower courts have interpreted §230 to "confer sweeping immunity" for a platform's own actions. *Malwarebytes, Inc.* v. *Enigma Software Group USA, LLC*, 592 U. S. ___, ___ (2020) (statement of THOMAS, J., respecting denial of certiorari) (slip op., at 1). Courts have "extended §230 to protect companies from a broad array of traditional product-defect claims." *Id.*, at ___–___ (slip op., at 8–9) (collecting examples). Even when platforms have allegedly engaged in egregious, intentional acts—such as "deliberately structur[ing]" a website "to facilitate illegal human trafficking"—platforms have successfully wielded §230 as a shield against suit. *Id.,* at ___ (slip op., at 8); see *Doe* v. *Facebook*, 595 U. S. ___, ___ (2022) (statement of THOMAS, J., respecting denial of certiorari) (slip op., at 2).

The question whether §230 immunizes platforms for their own conduct warrants the Court's review. In fact, just last Term, the Court granted certiorari to consider whether and how §230 applied to claims that Google had violated the Antiterrorism Act by recommending ISIS videos to YouTube users. See *Gonzalez* v. *Google LLC*, 598 U. S. 617, 621 (2023). We were unable to reach §230's scope, however, because the plaintiffs' claims would have failed on the merits regardless. See *id.*, at 622 (citing *Twitter, Inc.* v. *Taamneh*, 598 U. S. 471 (2023)). This petition presented the Court with an opportunity to do what it could not in *Gonzalez* and squarely address §230's scope.

Although the Court denies certiorari today, there will be other opportunities in the future. But, make no mistake about it—there is danger in delay. Social-media platforms

have increasingly used §230 as a get-out-of-jail free card. Many platforms claim that users' content is their own First Amendment speech. Because platforms organize users' content into newsfeeds or other compilations, the argument goes, platforms engage in constitutionally protected speech. See *Moody* v. *NetChoice*, 603 U. S. ___, ___ (2024). When it comes time for platforms to be held accountable for their websites, however, they argue the opposite. Platforms claim that since they are *not* speakers under §230, they cannot be subject to any suit implicating users' content, even if the suit revolves around the platform's alleged misconduct. See *Doe*, 595 U. S., at ___–___ (statement of THOMAS, J.) (slip op., at 1–2). In the platforms' world, they are fully responsible for their websites when it results in constitutional protections, but the moment that responsibility could lead to liability, they can disclaim any obligations and enjoy greater protections from suit than nearly any other industry. The Court should consider if this state of affairs is what §230 demands. I respectfully dissent from the denial of certiorari.